

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



75-7061

---

UNITED STATES COURT OF APPEALS

*for the*

**SECOND CIRCUIT**

---

TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC.,

Plaintiffs-Appellants,

ROLAND H. HARLEN, ALVIN C. HUGGINS and CONTINUE,

Intervening Plaintiffs-Appellants,

v.

GEORGE ROMNEY, SECRETARY OF DEPT. OF HOUSING AND URBAN DEVELOPMENT, S. WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPT. OF HOUSING AND URBAN DEVELOPMENT, U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT, CHARLES URSTADT, COMMISSIONER OF HOUSING AND COMMUNITY RENEWAL, N.Y. STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, THE STATE OF NEW YORK, JOHN V. LINDSAY, ALBERT A. WALSH, HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK, DONALD H. ELLIOTT, WALTER MCQUADR, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW YORK,

Defendants-Appellees,

STRYCKER'S BAY NEIGHBORHOOD COUNCIL INC.,

Intervening Defendant-Appellee.

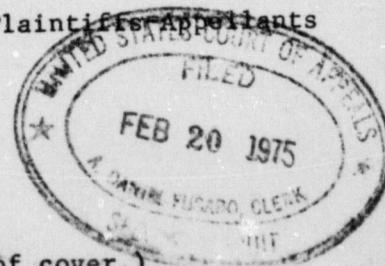
---

JOINT APPENDIX

(Volume I of II - Pages A-1 - A-181)

---

DEMOV, MORRIS, LEVIN & SHEIN  
Attorneys for Plaintiffs Appellants and Intervening Plaintiffs-Appellees  
40 West 57th Street  
New York, New York 10019  
757-5050



(Additional appearances on reverse side of cover.)

PAGINATION AS IN ORIGINAL COPY

HON. PAUL J. CURRAN  
United States Attorney for the Southern District of New York  
United States District Courthouse  
New York, New York 10007

Attorney for Defendants-Appellees  
David P. Land, Esq.  
Assistant United States Attorney - Of Counsel - 791-0054

HON. ADRIAN P. BURKE  
Corporation Counsel for the City of New York  
Municipal Building  
New York, New York 10007

Attorney for City of New York - Appellee  
Leonard Koerner, Esq. - Of Counsel  
Appeals Division - 566-3322

MARTTIE L. THOMPSON, Esq.  
Community Action for Legal Services, Inc.  
335 Broadway  
New York, New York 10013  
Attorney for Intervening Defendant-Appellee  
John de P. Douw, Esq. - Of Counsel - 966-6600

HON. LOUIS J. LEFKOWITZ  
Attorney General, State of New York  
World Trade Center  
New York, New York

Attorney for State of New York  
Thomas R. McLoughlin, Esq. - Assistant Attorney General -  
Of Counsel - 488-2097

INDEX TO JOINT APPENDIX

VOLUME I

	<u>Page</u>
Relevant Docket Entries	A-1
Complaint	A-5
Amended Complaint	A-14
Answer of Lindsay, et al	A-23
Answer of Romney, et al	A-31
Affidavit of David McGregor in opposition to plaintiffs' application for a temporary injunction	A-33
Post Trial Exhibit - Letter of May 28, 1974, New York City to Hon. Irving Ben Cooper	A-52
Post Trial Exhibit - Letter of May 22, 1974, Austin K. Haldenstein to Hon. Irving Ben Cooper	A-54
Notice of Appeal	A-55
Notice of Appeal	A-57
Opinion of the Court Below	A-59

VOLUME II

Plaintiffs' Post Trial Brief	A-182
First 43 pages of Defendants' Post Trial Brief	A-498
Plaintiffs' Answering Post Trial Brief	A-541

RELEVANT DOCKET ENTRIES

## CIVIL DOCKET

UNITED STATES DISTRICT COURT

D. C. Part No. 106 Rev.

## TITLE OF CASE

TRINITY EPISCOPAL SCHOOL CORPORATION and  
TRINITY HOUSING COMPANY, INC.,Plaintiffs,  
-against-

GEORGE ROMNEY, SECRETARY OF DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT, S.  
WILLIAM GREEN, REGIONAL ADMINISTRATOR, DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT, UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT, CHARLES  
URSTADT, COMMISSIONER OF HOUSING AND  
COMMUNITY RENEWAL, NEW YORK STATE DIVISION  
OF HOUSING AND COMMUNITY RENEWAL, THE STATE  
OF NEW YORK, JOHN V. LINDSAY, ALBERT A.  
WALSH, HOUSING AND DEVELOPMENT ADMINIS-  
TRATION OF THE CITY OF NEW YORK, THE CITY  
PLANNING COMMISSION OF THE CITY OF NEW YORK,  
DONALD H. ELLIOTT, WALTER McQUADE, IVAN  
MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN,  
WILLIS CALLENT, ABRAHAM D. BEAME, SANFORD

DMLS

Jury demand date:

71 CIV. 431  
JUDGE CO

13 ATTORNEYS

For Plaintiff:  
DENOV, MORRIS LEWIN & SMITH  
1380 Broadway - Suite 1000  
N.Y.C.N.Y. 10036  
40 W. 57th St. - as of 2/20/73  
Tel. 757-5050

## For defendant:

J. Lee Rankin, Esq. Corporation Cou  
(for depts. docketed on back) 1381  
NY 10036  
United States Attorney (for Romney  
and U.S. Dept. of Housing and Urban  
U.S. Courthouse, Foley Sq. NY 10007

D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS,  
SEBASTIAN LEONE, SIDNEY LEVISS, ROBERT T.  
CONNOR and THE CITY OF NEW YORK,

Defendants.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 5 mailed X	Clerk	10/4/71	Recon-A. 157- 10/5/71 6:57A	10
J.S. 6 mailed	Marshal			
Basis of Action: 28 U.S.C. 2331-2343 etc.	Docket fee			
	Witness fees			
Action arose at:	Depositions			

RELEVANT DOCKET ENTRIES

TRINITY EPISCOPAL SCHOOL CORP, V. BONILLA-CRELLANA, INC ET-AL

71 CIV. 431

DATE	PROCEEDINGS	Date of Judgment
11-7-71	Filed Complaint. Issued Summons.	
Dec. 3-71	Filed stip and order that the time for deft. Lindsay, and other certain defts. to answer complaint is ext. to 12-6-71. Ryan, J.	
Dec. 9-71	Filed ANSWER of John V. Lindsay, Albert A. Walsh, Housing and Development Adm. The City Planning Commission, Donald H. Elliott, Walter McQuade, Ivan Michael, etc. to complaint.	
Dec. 10-71	Filed ANSWER of deft. George Romney, Sec.of Dept.of Housing and Urban Development; deft. S. William Green, Reg. Admr. Dept. of Housing,etc; Deft. U.S. Department of Housing and Urban Development to complaint.	USAT
Dec. 10-71	Filed stip and order that the time for the U.S.A. to answer complaint is ext. from 12-6-71 to 12-22-71. Ryan, J.	
Dec. 10-71	Filed Summons with Marshal's ret. Served. George Romney, by Pauline Troia, on 10-7-71. Mailed by certified mail copies to Atty. General, Wash. D.C. Receipt #490609 and Dept. of Housing and Urban Development, Wash. D.C. Receipt #490611	
Dec. 15-71	Filed Notice of Motion re: Intervene. Ret. 12/21/71. (by Community Action for Legal Services)	
Dec. 15-71	Filed Memorandum of Points and Authorities in support of deft-intervenor's motion.	
Dec. 21-71	Filed stipulation confirming motion now ret. 12/21/71 to 1/11/72.	
Jan. 21-72	Filed Plaintiff's Memorandum in opposition to motion to intervene.	
Jan. 13-72	Filed MEMO. P.D. on motion papers filed 1/3/72. Motion denied. See memorandum decision (Opinion #38419) of this date with Strykers Bay Neighborhood Council's motion to intervene (Motion #85 on 1/25/72). MacMahon, J.	
Jan. 13-72	Filed FEDERAL OPINION #38419. MacMahon, J. Strykers Bay's motion to intervene in as of right is granted; Bonilla-Crellana's motion to intervene on their own behalf is in all respects denied; and Bonilla-Crellana's motion to intervene as representatives of a class is also denied, so ordered. (Mailed notice).	

JUN 13-72 Filed Attorneys for Defendant-Intervenor-Request to produce certain documents and to permit inspection and copying (Federal Defendants)

JUN 13-72 Filed Attorneys for Defendant-Intervenor-Request to produce certain documents and to permit inspection and copying.

JUN 13-72 Filed Interrogatories to the Federal Defendants. (First Set)

JUN 13-72 Filed Interrogatories to plaintiffs (first set)

JUL 22-73 Filed Pltffs Notice of Change of Office Address as of 2/20/73 will be 140 W. 57th St. NY, NY

JUL 20-73 Filed affdvt. and notice of motion by pltffs for an order granting preliminary injunction against the defendants - ret. 6-7-73 at 2:15 P.M. in Ra 2703

JUL 20-73 Filed pltffs' memorandum of law in support of its motion for preliminary injunction

JUL 20-73 Filed affdvt. and notice of motion pltffs. motion for an order permitting movants to intervene as party plaintiffs - ret. 6-7-73 at 2:15 P.M. in Ra 2703

JUL 20-73 Filed pltffs'-Intervenors' memorandum of law in support of their appl. to intervene.

Sep-13-73 Filed by City defendants, affdvt. of David McGregor in opposition to pltffs. motion for preliminary injunction.

Sep-13-73 Filed by City defendants, memorandum of law in opposition to pltffs application for preliminary injunction.

Sep-13-73 Filed by deft. Stryker's Bay Neighborhood Counsel, affdvt. of Rev. Thomas Farrelly in opposition to pltffs motion for a preliminary injunction.

Sep-14-73 Filed by deft. Stryker's Bay Neighborhood Counsel, memorandum of law in opposition to pltffs motion for preliminary injunction.

Sep-14-73 Filed by deft. Stryker's Bay Neighborhood Counsel, affdvt. of Robert F. Levy in opposition to motion to intervene.

Sep-14-73 Filed by deft. Stryker's Bay Neighborhood Counsel, memorandum of law in opposition to motion to intervene.

(see P. 2, 3) B

RELEVANT DOCKET ENTRIES

Y EPISCOPAL SCHOOL CORP, ET ANO VS GEORGE ROMNEY ET AL

~~SECRET~~

4315

PAGE -3-

DATE	PROCEEDINGS
Sept. 17-73	Filed affidavit of deft. David P. Land in support of application to preclude any evidence by pliffs. or the intervening pliffs. in respect to environmental issues.
Sept. 17-73	Filed affidavit of deft. memorandum of law in opposition to motion for prel. inj.
Sep 21-73	Filed reply memo with respect to environmental issues raised by the defts.
Sep 21-73	Filed pliffs analysis re: of decision in Oster v. NYC Housing Authority
Sep 21-73	Filed pliffs notice of motion, Re: Amend complaint, ret before Cooper J.
Sep 21-73	Filed pliffs reply affidavit in support of intervention.
Sep 21-73	Filed pliffs-Pltff Intervenors affidavit by Eugene J. Morris in reply and in further support of motion for a Preliminary Injunction.
Sep. 21-73	Filed memo end. on pliffs. motion dated July 20, 1973 for an order granting pliffs. a preliminary injunction against defts., enjoining and restraining such defts. from going forward with construction, etc. --- The within matter is respectfully submitted to Judge Irving Ben Cooper. Weinfield, J. m/n
Sep. 21-73	Filed memo end. on pliffs. motion dated July 20, 1973 (as above) -- 19 Application to withdraw Temporary injunction granted, no opposition. Case goes to trial at the present time. So ordered, Cooper, J.m/n
Sept. 20, 73	Hearing began & continued. Pliffs. motion for Preliminary Injunction withdrawn. Pliffs. motion for Intervention and to amend complaint decision reserved.
Oct. 9-73	Non-Jury trial begun before Judge Cooper.
Oct. 10-73	Trial Cont'd
Oct. 11-73	Trial Cont'd
Jan. 15-74	Filed transcript of record of proceedings dated Sept. 19, 20, 1973 and Oct. 9, 10, 1973.
Jan. 28-74	Filed transcript of record of proceedings dated Nov. 20, 1973.
Apr. 22-74	Before Cooper, Non-Jury Trial Cont'd
Apr. 23-74	Trial Cont'd
Apr. 24-74	Trial Cont'd
Apr. 25-74	Trial Cont'd
Apr. 26-74	Trial Cont'd

Apr. 29-74	Trial Cont'd	
Apr. 30-74	Trial Cont'd.	
May 1, 74	Trial Cont'd.	
May 6, 74	Trial cont'd.	
May 7, 74	Trial cont'd.	
May 8, 74	Trial cont'd.	
May 9, 74	Trial cont'd.	
May 10, 74	Trial cont'd.	
May 13, 74	Trial cont'd.	
May 14, 74	Trial cont'd.	
May 15, 74	Trial cont'd.	
May 16, 74	Trial cont'd.	
May 17, 74	Trial cont'd.	
May 20, 74	Trial concluded - Decision Reserved.	
6-19-74	Filed transcript of record of proceedings, dated 4-22-73, case # 4-24-25-26-74	4
6-19-74	Filed transcript of record of proceedings, dated 4-29-74, case # 5-1-6-74	4
6-19-74	Filed transcript of record of proceedings, dated 5-13-74	5
6-19-74	Filed transcript of record of proceedings, dated 5-18-74	5
6-19-74	Filed transcript of record of proceedings, dated 5-17-74	5
7-8-74	Filed transcript of record of proceedings, dated 5-16-74	5
36	Nov. 15-74 filed pliffs' post trial brief.	36
37	Nov. 15-74 filed defts' & intervening deft's post-trial reply memorandum.	37

Cont'd Page #4

RELEVANT DOCKET ENTRIES

71 Civ. 4315

Trinity Episcopal -vs- Sec'y of Dept of Housing et al  
Page #4.

71civ-3

DATE	PROCEEDINGS
ov. 15-74	Filed defts' & intervening deft's post-trial memorandum.
ov. 15-74	Filed defts' & intervening deft's supplemental post-trial memorandum.
ov. 15-74	Filed plaintiffs' supplemental post-trial reply memorandum.
ov. 15-74	Filed plaintiffs' answering post-trial brief.
ov. 15-74	Filed OPINION #41,440-with the exception of plaintiffs' motion for counsel fees, which we will consider at a later time, judgment shall be entered in favor of defts. The foregoing shall constitute the Court's findings & conclusions of law. So Ordered--Cooper, J. Mailed notices.-Judgment Entered-Clerk
ov. 15-74	Filed letters referred to in opinion filed 11-15-74.
en. 13-75	Filed plaintiffs' notice of appeal from judgment in favor of defts. entered 11-15-74 Mailed copies to Paul J. Curran U.S. Atty., Adrian P. Burke Corp. Counsel N.Y. -Hedley-H.-Sedli-Robt--F--Limer-, Marttie L. Thompson, Louis J. Efkowitz Atty Gen'l N.Y.

USCA 2nd Cir. 1975 Docket Action

D

COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

SAME TITLE

-----X

Plaintiffs, by their undersigned attorneys, DEMOV, MORRIS, LEVIN & SHEIN, for their complaint, allege:

1. This Court's jurisdiction is based upon the Fifth and Fourteenth Amendments of the United States Constitution, Title 28 U.S.C. Sections 1331, 1343, 1361 and 2201, Title 42 U.S.C. §§ 1982, 1983, 2000d and 3612 and principles of pendent jurisdiction.

2. This action arises under the United States Constitution, the Civil Rights Acts of 1866, 1871, 1964 et seq., the National Housing Act, as amended, the Housing and Urban Development Act of 1965, the rules and regulations of the Department of Housing and Urban Development ("HUD" hereinafter), the Private Housing Finance Law of the State of New York, and the rules and regulations of the New York State Division of Housing and Community Renewal and the Department of Housing and Development Administration of the City of New York ("HDA" hereinafter) and principles of common law.

3. Plaintiff TRINITY EPISCOPAL SCHOOL CORPORATION ("Trinity School" hereinafter), formerly known as New York Protestant Episcopal Public School is, and throughout the times hereinafter, was a corporation organized under the laws of the State of New York by Act of the Legislature of that

COMPLAINT

state on March 14, 1806.

4. Plaintiff TRINITY HOUSING COMPANY, INC. ("Trinity Housing" hereinafter) is, and throughout some of the relevant times hereinafter alleged was, a limited profit housing company organized and existing under Article 2 of the Private Housing Financing Law of the State of New York.

5. (a) Defendant GEORGE ROMNEY is, and throughout some of the times hereinafter alleged was, the Secretary of defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD" hereinafter).

(b) Defendant S. WILLIAM GREEN is, and throughout some of the times hereinafter alleged was, Regional Administrator of defendant HUD;

(c) Defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT is, and throughout the times hereinafter alleged was, the Department charged with the responsibility of distributing funds of the United States Government allocated for various housing programs throughout the United States, overseeing the federal housing acts, housing programs and issuing rules and regulations with respect thereto;

(d) Defendant CHARLES URSTADT is, and throughout some of the times hereinafter alleged was, the Commissioner of defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL:

(e) Defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL is, and throughout some of the times hereinafter alleged was, a division of the Executive

COMPLAINT

Department of the defendant THE STATE OF NEW YORK, charged with the responsibility of supervising various housing programs in the State of New York and issuing rules and regulations with respect thereto;

(f) Defendant JOHN V. LINDSAY is, and throughout the times hereinafter alleged was, Mayor of the City of New York;

(g) Defendant ALBERT A. WALSH is, and throughout some of the times hereinafter alleged was, Administrator of the defendant NEW YORK CITY DEPARTMENT OF HOUSING AND DEVELOPMENT ADMINISTRATION:

(h) Defendant HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK ("HDA") is, and throughout the times hereinafter alleged was, charged with the responsibility of initiating, conducting, evaluating, supervising and coordinating programs relating to urban renewal and publicly assisted housing among other things;

(i) Defendant THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK ("City Planning Commission") is, and throughout the times hereinafter alleged was, charged with responsibility of initiating and preparing plans with respect to building projects in the City of New York and conducting hearings with respect thereto, among other things, and defendants DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L. COLEMAN, CHESTER RAPKIN and MARTIN GALLENT were chairman and commissioners thereof, respectively; and

COMPLAINT

(j) Defendants ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS and ROBERT T. CONNOR are, and throughout some of the times hereinafter alleged were, along with defendant JOHN V. LINDSAY, members of the Board of Estimate of the City of New York.

6. Prior to 1962, plaintiff TRINITY SCHOOL owned, maintained and operated a private, non-sectarian, elementary and secondary school located in the area between West 91st and West 92nd Streets between Columbus Avenue and Amsterdam Avenue, in the Borough of Manhattan. The school facilities consisted of a number of buildings built at various times, together with supporting athletic facilities. The school provided education from grades 1 through 12 and students for such grades attended and continue to attend Trinity School. Substantial scholarships have been and continue to be made available to students of widely varying backgrounds, including lower economic standings, and, as a result, the school has, continues, and will, continue, to function with, a student body, integrated economically, and in terms of race and creed.

7. Prior to and in 1962, the general area and immediate surrounding environs in which Trinity School was located was deteriorated, sub-standard and unsanitary. The structures in the general area were mostly dilapidated and crumbling, the racial integration of the community was deteriorating and a high incidence of crime was prevalent.

COMPLAINT

8. As a result of the foregoing, plaintiff Trinity School, together with its staff and its students were in constant danger and were subject on a daily basis, to an unhealthy atmosphere. As a result, plaintiff Trinity School commenced planning for the removal of its facilities to a new site located outside of the City of New York.

9. Defendants CITY OF NEW YORK and HDA devised and promulgated with the approval and assistance of (financial and otherwise) of defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL and the HOUSING AND HOME FINANCE AGENCY OF THE UNITED STATES OF AMERICA (the predecessor agency of defendant HUD), a plan for the replanning, improvement, reconstruction and neighborhood rehabilitation of the general area in which plaintiff TRINITY SCHOOL was located. (The area became known as and is hereinafter described as the West Side Urban Renewal Area.) The plan, as prepared by defendant CITY OF NEW YORK and HDA (or its predecessor, the Housing and Re-development Board) was approved by defendant THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, the predecessor of HUD (the HOUSING AND HOME FINANCE AGENCY), defendant CITY PLANNING COMMISSION and by the BOARD OF ESTIMATE OF THE CITY OF NEW YORK. The plan is hereinafter referred to as the "URBAN RENEWAL PLAN." The URBAN RENEWAL PLAN was designed to provide for the revitalization of the West Side Renewal Area through the creation of middle income housing, together with specified amounts of both low income and luxury housing and associated and

COMPLAINT

related facilities so as to establish a racially, ethnically and economically integrated community.

11. Acting in reliance upon representations made by defendant CITY OF NEW YORK and relying upon the West Side Urban Renewal Plan and its terms and conditions, plaintiff TRINITY SCHOOL agreed to abandon its plans for moving outside of the City of New York and, instead, agreed to remain at its then location and to acquire additional adjoining property from the City of New York within the West Side Urban Renewal Area, and to construct thereon, in addition to its school facilities, a rental housing development to be built over a new school addition, with financing and supervision to be provided pursuant to Article 2 of the Private Housing Finance Law of the State of New York. Plaintiff TRINITY SCHOOL and defendant CITY OF NEW YORK entered into and executed a written agreement with respect to the foregoing and the Urban Renewal Plan for the integrated community formed part of said agreement.

12. (a) Plaintiff TRINITY SCHOOL duly performed its obligations under the aforesaid agreement and in reliance upon representations of the City of New York it acquired from said defendant a plot of land located in the renewal area and known as Site No. 24 and constructed thereon a school addition and apartment building. In performing the foregoing, plaintiff TRINITY SCHOOL expended more than \$3,000,000 of its funds and it and plaintiff TRINITY HOUSING incurred mortgage liabilities of approximately \$5,8000,000.

COMPLAINT

(b) In reliance upon the foregoing agreement, the Urban Renewal Plan and representations of the City of New York and to induce tenants to occupy the apartment building, plaintiff TRINITY SCHOOL assured prospective occupants and tenants that the community wide area in which the building was located would be a fully economically, ethnically and racially integrated middle income housing area pursuant to the Urban Renewal Plan, and based thereon, plaintiff TRINITY SCHOOL was able to secure occupants for its apartment building.

13. Subsequent to the construction of the school addition and the apartment building and to the rental of apartments in such building, defendants have publicly stated their intention to convert substantial portions of the West Side Urban Renewal Area changing the community wide area from one of a fully racially, ethnically and economically integrated one, as delineated in the Urban Renewal Plan and in representations of defendant CITY OF NEW YORK to plaintiffs, as aforesaid, to one of low income housing without regard to ethnic, economic or racial integration, thereby destroying the fabric of the community and have commenced specifically, to effectuate the aforesaid, without proper hearings or proceedings.

14. If the changes are made, it would violate plaintiffs' rights for the following reasons:

(a) It would be in breach and in violation of the agreement between the parties and the various

COMPLAINT

representations which caused plaintiffs to expend substantial amounts of money;

(b) It would unduly impair and affect plaintiffs' investments and contractual rights;

(c) Said changes and the manner in which they are being made violate plaintiffs' rights in that they are being made without proper hearings as required and said changes and the manner in which they are being made violate plaintiffs' rights under the United States Constitution, the National Housing Act, The Housing and Urban Development Act, the rules, directives and regulations of the applicable agencies and the Urban Renewal Plan.

15. Plaintiffs have no adequate remedy at law and they will be irreparably injured if the threatened changes are effectuated.

WHEREFORE, plaintiffs demand judgment as follows:

(a) Enjoining and restraining the defendants and each and every one of them, their agents, servants, employees or representatives from promulgating, making or effectuating any changes in the West Side Urban Renewal Plan made part of the Agreement between the parties;

(b) Awarding to plaintiffs any damages which they have sustained; and

COMPLAINT

(c) Such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action.

DEMOV, MORRIS, LEVIN & SHEIN

By (Irving Bizar)  
A Member of the Firm

1180 Avenue of the Americas  
New York, New York 10036

Attorneys for Plaintiffs

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

71 Civ. 4315 (E.W.)

AMENDED COMPLAINT

Plaintiffs, by their undersigned attorneys, DEMOV, MORRIS, LEVIN & SHEIN, for their complaint, allege:

1. This Court's jurisdiction is based upon the Fifth and Fourteenth Amendments of the United States Constitution, Title 28 U.S.C. Sections 1331, 1343, 1363 and 2201, Title 42 U.S.C. §§ 1982, 1983, 2000d and 3612 and principles of pendent jurisdiction.

2. This action arises under the United States Constitution, the Civil Rights Acts of 1866, 1871, 1964 et seq., the National Housing Act, as amended, the Housing and Urban Development Act of 1965 et seq., the National Environmental Policy Act of 1969, the Administrative Procedures Act, the rules and regulations of the Department of Housing and Urban Development ("HUD" hereinafter), the Private Housing Finance Law of the State of New York, and the rules and regulations of the New York State Division of Housing and Community Renewal and the Housing and Development administration of the City of New York ("HDA" hereinafter), and principles of common law.

3. Plaintiff TRINITY EPISCOPAL SCHOOL CORPORATION ("Trinity School" hereinafter), formerly known as New York Protestant Episcopal Public School is, and throughout the times hereinafter, was a corporation organized under the laws

AMENDED COMPLAINT

of the State of New York by Act of the Legislature of that state on March 14, 1806.

4. Plaintiff TRINITY HOUSING COMPANY, INC. ("Trinity Housing" hereinafter) is, and throughout some of the relevant times hereinafter alleged was, a limited profit housing company organized and existing under Article 2 of the Private Housing Financing Law of the State of New York.

5. (a) Defendant GEORGE ROMNEY is, and throughout some of the times hereinafter alleged was, the Secretary of defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD" hereinafter).

(b) Defendant S. WILLIAM GREEN is, and throughout some of the times hereinafter alleged was, Regional Administrator of defendant HUD;

(c) Defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT is, and throughout the times hereinafter alleged was, the Department charged with responsibility of distributing funds of the United States Government allocated for various housing programs throughout the United States, overseeing the federal housing acts, housing programs and issuing rules and regulations with respect thereto;

(d) Defendant CHARLES URSTADT is, and throughout some of the times hereinafter alleged was, the Commissioner of defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL;

(e) Defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL is, and throughout some of the times hereinafter

AMENDED COMPLAINT

alleged was, a division of the Executive Department of the defendant THE STATE OF NEW YORK, charged with the responsibility of supervising various housing programs in the State of New York and issuing rules and regulations with respect thereto;

(f) Defendant JOHN V. LINDSAY is, and throughout the times hereinafter alleged was, Mayor of the City of New York;

(g) Defendant ALBERT A. WALSH is, and throughout some of the times hereinafter alleged was, Administrator of the defendant NEW YORK CITY DEPARTMENT OF HOUSING AND DEVELOPMENT ADMINISTRATION:

(h) Defendant HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK ("HDA") is, and throughout the times hereinafter alleged was, charged with responsibility of initiating, conducting, evaluating, supervising and coordinating programs relating to urban renewal and publicly assisted housing, among other things;

(i) Defendant THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK ("City Planning Commission") is, and throughout the times hereinafter alleged was, charged with responsibility of initiating and preparing plans with respect to building projects in the City of New York and conducting hearings with respect thereto, among other things, and defendants DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L. COLEMEN, CHESTER RAPKIN and MARTIN GALLENT were chairman and commissioners thereof, respectively; and

AMENDED COMPLAINT

(j) Defendants ABRAHAM D. BEAME, SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN LEONE, SIDNEY LEVISS and ROBERT T. CONNOR are, and throughout some of the times hereinafter alleged were, along with defendant JOHN V. LINDSAY, members of the Board of Estimate of the City of New York.

6. Prior to 1962, plaintiff TRINITY SCHOOL owned, maintained and operated a private, non-sectarian, elementary and secondary school located in the area between West 91st and West 92nd Streets between Columbus Avenue and Amsterdam Avenue, in the Borough of Manhattan. The school facilities consisted of a number of buildings built at various times, together with supporting athletic facilities. The school provided education from grades 1 through 12 and students for such grades attended and continue to attend Trinity School. Substantial scholarships have been and continue to be made available to students of widely varying backgrounds, including lower economic standings, and, as a result, the school has, continues, and will, continue, to function with, a student body, integrated economically, and in terms of race and creed.

7. Prior to and in 1962, the general area and immediate surrounding environs in which Trinity School was located was deteriorated, sub-standard and unsanitary. The structures in the general area were mostly dilapidated and crumbling, the racial integration of the community was deteriorating and a high incidence of crime was prevalent.

8. As a result of the foregoing, plaintiff Trinity

AMENDED COMPLAINT

School, together with its staff and its students were in constant danger and were subject on a daily basis, to an unhealthy atmosphere. As a result, plaintiff Trinity School commenced planning for the removal of its facilities to a new site located outside of the City of New York.

9. Defendants CITY OF NEW YORK and HDA devised and promulgated with the approval and assistance of (financial and otherwise) of defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL and the HOUSING AND HOME FINANCE AGENCY OF THE UNITED STATES OF AMERICA (the predecessor agency of defendant HUD), a plan for the replanning, improvement, reconstruction and neighborhood rehabilitation of the general area in which plaintiff TRINITY SCHOOL was located. (The area became known as and is hereinafter described as the West Side Urban Renewal Area.) The plan, as prepared by defendant CITY OF NEW YORK and HDA (or its predecessor, the Housing and Redevelopment Board) was approved by defendant THE NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL, the predecessor of HUD (the HOUSING AND HOME FINANCE AGENCY), defendant CITY PLANNING COMMISSION and by the BOARD OF ESTIMATE OF THE CITY OF NEW YORK. The plan is hereinafter referred to as the "URBAN RENEWAL PLAN." The URBAN RENEWAL PLAN was designed to provide for the revitalization of the West Side Renewal Area through the creation of middle income housing, together with specified amounts of both low income and luxury housing and associated and related facilities so as to establish a racially, ethnically and economically integrated community.

AMENDED COMPLAINT

11. Acting in reliance upon representations made by defendant CITY OF NEW YORK and relying upon the West Side Urban Renewal Plan and its terms and conditions, plaintiff TRINITY SCHOOL agreed to abandon its plans for moving outside of the City of New York and, instead, agreed to remain at its then location and to acquire additional adjoining property from the City of New York with the West Side Urban Renewal Area, and to construct thereon, in addition to its school facilities, a rental housing development to be built over a new school addition, with financing and supervision to be provided pursuant to Article 2 of the Private Housing Finance Law of the State of New York. Plaintiff TRINITY SCHOOL and defendant CITY OF NEW YORK entered into and executed a written agreement with respect to the foregoing and the Urban Renewal Plan for the integrated community formed part of said agreement.

12. (a) Plaintiff TRINITY SCHOOL duly performed its obligations under the aforesaid agreement and in reliance upon representations of the City of New York it acquired from said defendant a plot of land located in the renewal area and known as Site No. 24 and constructed thereon a school addition and apartment building. In performing the foregoing, plaintiff TRINITY SCHOOL expended more than \$3,000,000 of its funds and it and plaintiff TRINITY HOUSING incurred mortgage liabilities of approximately \$5,800,000.

(b) In reliance upon the foregoing agreement, the Urban Renewal Plan and representations of the City of New York and to induce tenants to occupy the apartment building,

AMENDED COMPLAINT

plaintiff TRINITY SCHOOL assured prospective occupants and tenants that the community wide area in which the building was located would be a fully economically, ethnically and racially integrated middle income housing area pursuant to the Urban Renewal Plan, and based thereon, plaintiff TRINITY SCHOOL was able to secure occupants for its apartment building.

13. Subsequent to the construction of the school addition and the apartment building and to the rental of apartments in such building, defendants have publicly stated their intention to convert substantial portions of the West Side Urban Renewal Area changing the community wide area from one of a fully racially, ethnically and economically integrated one, as delineated in the Urban Renewal Plan and in representations of defendant CITY OF NEW YORK to plaintiffs, as aforesaid, to one of low income housing without regard to ethnic, economic or racial integration, thereby destroying the fabric of the community and have commenced specifically, to effectuate the aforesaid, without proper hearings or proceedings.

14. Defendant, the U.S. Department of Housing and Urban Development, has failed to file an environmental impact statement pursuant to the mandate of the National Environmental Policy Act of 1969, as the conversion of Site 30 and Site 4 from middle income to low income housing constitutes major Federal action significantly affecting the quality of the environment. The cumulative impact of such conversion would tip the socio-economic composition of the neighborhood and cause a panic flight of middle income families with a consequent

AMENDED COMPLAINT

reghettoization of the area.

15. If the changes are made, it would violate plaintiffs' rights for the following reasons:

(a) It would be in breach and in violation of the agreement between the parties and the various representations which caused plaintiffs to expend substantial amounts of money;

(b) It would unduly impair and affect plaintiffs' investments and contractual rights;

(c) Said changes and the manner in which they are being made violate plaintiffs' rights in that they are being made without proper hearings as required and said changes and the manner in which they are being made violate plaintiffs' rights under the United States Constitution, the National Housing Act.

(d) It would be in breach of the mandate of the National Environmental Policy Act of 1969.

16. Plaintiffs have no adequate remedy at law and they will be irreparably injured if the threatened changes are effectuated.

WHEREFORE, plaintiffs demand judgment as follows:

(a) Enjoining and restraining the defendants and each and every one of them, their agents, servants, employees or representatives from promulgating, making or effectuating any changes in the West Side Urban Renewal Plan made part

AMENDED COMPLAINT

of the Agreement between the parties;

(b) Awarding to plaintiffs any damages which they have sustained; and

(c) Such other and further relief as the Court may deem just and proper, together with the costs and disbursements of this action.

DEMOV, MORRIS, LEVIN & SHEIN

By (Eugene Morris)

A Member of the Firm

40 West 57th Street  
New York, New York  
757-5050

ANSWER OF LINDSAY, ET AL

UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANSWER  
SAME TITLE  
Civ. Action File No.  
71 CIV. 4315

-----X  
Defendants, JOHN V. LINDSAY, ALBERT A. WALSH,  
HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW  
YORK, THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK,  
DONALD H. ELLIOTT, WALTER McQUADE, IVAN MICHAEL, GERALD L.  
COLEMAN, CHESTER RAPKIN, MARTIN GALLENT, ABRAHAM D. BEAME,  
SANFORD D. GARELIK, PERCY E. SUTTON, ROBERT ABRAMS, SEBASTIAN  
LEONE, SIDNEY LEVISS, ROBERT T. CONNER and THE CITY OF NEW  
YORK (hereafter City Defendants), by their attorney, J. LEE  
RANKIN, Corporation Counsel, answering the complaint herein,  
allege as follows:

1. Deny the allegations in the paragraphs of the  
complaint numbered "1", "2", "13", "14(a)", "14(b)", "14(c)"  
and "15".

2. Deny knowledge and information sufficient to  
form a belief as to the truth of the allegations in the  
paragraphs of the complaint numbered "3", "6", "7", "8" and  
"12(b)".

3. Deny the allegations in paragraph of the complaint  
numbered "5(c)" and aver that the powers and responsibilities  
of the defendant UNITED STATES DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT (hereafter HUD), with respect to administration of  
the Urban renewal Program are set forth in the Housing Act of

ANSWER OF LINDSAY, ET AL

1949, as amended, 42 U.S.C. §1451 et seq. and respectfully refer this court to said statutory provisions for the content and legal import thereof.

4. Deny the allegations in paragraph of the complaint numbered "5(e)", except admit that defendant NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL (hereafter HCR) is an agency of the government of the State of New York, and respectfully refer the Court to the applicable provisions of law setting forth the powers, duties and responsibilities of that agency.

5. Deny the allegations in paragraph of the complaint numbered "5(f)", except admit defendant JOHN V. LINDSAY is presently Mayor of the City of New York, having assumed the duties of said office on January 1, 1966.

6. Deny the allegations in paragraph of the complaint numbered "5(g)", except admit that defendant ALBERT A. WALSH is presently Administrator of the defendant HOUSING AND DEVELOPMENT ADMINISTRATION OF THE CITY OF NEW YORK (hereafter HDA).

7. Deny the allegations in paragraph of the complaint numbered "5(h)", and respectfully refer the Court to Chapter 61 of the New York City Charter for the powers, duties and responsibilities of the defendant HDA.

8. Deny the allegations in paragraph of the complaint numbered "5(i)", and respectfully refer the Court to Chapter 8 of the New York City Charter for the powers, duties and responsibilities of THE CITY PLANNING COMMISSION OF THE CITY OF NEW YORK (hereafter Commission), and admit that defendants

ANSWER OF LINDSAY, ET AL

ELLIOT, McQUADE, MICHAEL, COLEMAN, RAPKIN and GALLENT were at times subsequent to January 1, 1966, Chairman and Commissioners, respectively, of the Commission, having been appointed thereto by defendant LINDSAY.

9. Deny the allegations in paragraph of the complaint numbered "9", except admit that the defendant THE CITY OF NEW YORK (hereafter City) prepared, through its duly authorized agency, a plan known as the West Side Urban Renewal Plan, which plan was approved by the United States Housing and Home Finance Agency (hereafter HHFA), the defendant HCR, the defendant Commission and by the Board of Estimate of the City of New York (hereafter Board) by resolution adopted June 26, 1962 (Cal. No. 5-A), and amended by resolutions adopted November 21, 1963 (Cal. No. 12-A), December 3, 1964 (Cal. No. 11-A), October 14, 1965 (Cal. No. 24-A), October 27, 1966 (Cal. No. 11-A), and December 9, 1966 (Cal. No. 4-A) and respectfully refer the Court to the text of the said Plan for the contents and legal import thereof.

10. Deny so much of paragraph "11" of the complaint as alleges representations made by the defendant City, deny knowledge and information sufficient to form a belief as to remaining allegations in said paragraph "11", except admit that defendant City and plaintiff TRINITY EPISCOPAL SCHOOLS CORPORATION entered into an agreement dated June 20, 1968 with respect to the disposition of Site 24 in the West Side Urban Renewal Area, Borough of Manhattan, and respectfully refer the

ANSWER OF LINDSAY, ET AL

Court to the text of that agreement for the content and legal import thereof.

11. Deny so much of paragraph "12(a)" of the complaint as alleges representations made by the defendant City; deny knowledge and information sufficient to form a belief as to the remaining allegations in said paragraph "12(a)", except admit that plaintiff TRINITY SCHOOL acquired from defendant City a plot of land known as Site 24 and located in the West Side Urban Renewal Area, Borough of Manhattan, in accordance with an agreement between said plaintiff and the defendant City dated June 20, 1968, and respectfully refer the Court to the text of that agreement for the content and legal import, thereof.

FIRST AFFIRMATIVE DEFENSE

12. This Court lacks subject matter jurisdiction over this action.

SECOND AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

14. The City defendants have at all times acted in accordance with applicable constitutional and statutory provisions of law and agreements with respect to the West Side Urban Renewal Area project.

WHEREFORE, the City defendants demand judgment in their favor and against the plaintiffs dismissing the complaint

ANSWER OF LINDSAY, ET AL

with prejudice and without costs.

Dated: New York, New York

December 3, 1971

J. LEE RANKIN  
Corporation Counsel of  
the City of New York  
Attorney for City Defendants

By JOHN R. THOMPSON

JOHN R. THOMPSON  
Special Assistant Corporation  
Counsel  
Office and P.O. Address  
Municipal Building  
New York, New York 10007  
Tel. No. (212) 566-2204  
566-0318

ANSWER OF ROMNEY, ET AL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

ANSWER

SAME TITLE

71 Civ. 4315

-----X

Defendant, George Romney, Secretary of the Department of Housing and Urban Development; defendant S. William Green, Regional Administrator of the Department of Housing and Urban Development; and defendant United States Department of Housing and Urban Development, by their attorney, Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, for their answer to the complaint allege as follows:

1. Deny the averments set forth in paragraphs 1 and 2 of the complaint, except admit that the action may arise upon the principles of common law.

2. Lack knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 3 and 4 of the complaint.

3. Admit the averments set forth in paragraph 5 of the complaint.

4. Lack knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 6, 7 and 8 of the complaint.

5. Lack knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraph 9 of the complaint, except admits that the "URBAN RENEWAL PLAN", being the March 1966 Amended Urban Renewal Plan (Fourth Revision),

ANSWER OF ROMNEY, ET AL

provides for the renovation of a geographical area known as the "West Side Urban Renewal Area".

6. Lacks knowledge or information sufficient to form a belief as to the truth of the averments set forth in paragraphs 11, 12(a), and 12(b) of the complaint.

7. Deny the averments set forth in paragraphs 13, 14 and 15 of the complaint.

FIRST AFFIRMATIVE DEFENSE

8. Plaintiffs fail to cite any statute which confers jurisdiction upon this Court over this action.

SECOND AFFIRMATIVE DEFENSE

9. Plaintiffs fail to state a claim entitling them to the relief demanded.

THIRD AFFIRMATIVE DEFENSE

10. The United States Department of Housing and Urban Development is not a suable entity.

FOURTH AFFIRMATIVE DEFENSE

11. S. William Green, in his capacity as Regional Administrator of the Department of Housing and Urban Development, is not a suable person.

FIFTH AFFIRMATIVE DEFENSE

12. This action is premature because it seeks an advisory opinion.

WHEREFORE, defendant George Romney, Secretary of the Department of Housing and Urban Development; defendant S. William Green, Regional Administrator of the Department of Housing and

ANSWER OF ROMNEY, ET AL

Urban Development; and defendant Department of Housing and Urban Development demand judgment dismissing the complaint herein, together with the costs and disbursements of this action, and such other further and different relief, including defendants' costs and disbursements of this action, which the Court may deem just and proper.

Dated: New York, New York

December 9, 1971

WHITNEY NORTH SEYMOUR, JR.  
United States Attorney  
for the Southern District  
of New York  
Attorney for the Defendants.

By: (David P. Land)

DAVID P. LAND  
Assistant United States  
Attorney  
Office & P.O. Address:  
United States Courthouse  
Foley Square  
New York, New York 10007  
Tel.: (212) 264-6337

ANSWER OF URSTADT, ET AL

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANSWER  
SAME TITLE  
71 Civ. 4315  
-----X

Defendants, CHARLES URSTADT, Commissioner of Housing and Community Renewal, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL and the STATE OF NEW YORK by their attorney LOUIS J. LEFKOWITZ, Attorney General of the State of New York, for their answer to the complaint, allege as follows:

FIRST: Deny each and every allegation set forth in paragraphs "1", "13", "14" and "15" of the complaint herein.

SECOND: Deny knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraphs "3", "4", "6", "7", "8", "11", "12(a)" and "12(b)".

THIRD: Deny each and every allegation set forth in paragraph "2" of the complaint except admit that the action may arise upon the principles of common law.

FOURTH: Deny each and every allegation set forth in paragraph "9" of the complaint except admit that the "Urban Renewal Plan" provides for the renovating of a geographical area known as "West Side Urban Renewal Area."

FIRST AFFIRMATIVE DEFENSE

FIFTH: This Court lacks jurisdiction over the subject matter of this action.

ANSWER OF URSTADT, ET AL

SECOND AFFIRMATIVE DEFENSE

SIXTH: Plaintiffs fail to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

SEVENTH: The State defendants have at all times acted in accordance with applicable constitutional and statutory provisions of law with respect to the subject Urban Renewal Area.

WHEREFORE, the State defendants demand judgment in their favor and against the plaintiffs dismissing the complaint together with the costs and disbursements of this action, and such other and further and different relief as this Court may deem just and proper.

Dated: New York, New York  
December 20, 1971

LOUIS J. LEFKOWITZ  
Attorney General of the State  
of New York  
Attorney for State Defendants  
By

---

JOEL LEWITTES  
Assistant Attorney General  
Office & P.O. Address  
80 Centre Street  
New York, New York 10013  
Tel. No. 488-3284

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION  
TO PLAINTIFFS' APPLICATION FOR A TEMPORARY  
INJUNCTION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SAME TITLE

71 Civ. 4315  
(E.W.)

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK)

DAVID McGREGOR, being duly sworn, deposes and says:

1. I am the Deputy Administrator and Commissioner of Development of the Housing and Development Administration of the City of New York ("HDA"), which agency is responsible for the City's urban renewal activities pursuant to Chapter 61 of the City Charter. I have read the moving papers submitted by plaintiffs on this application and am familiar with their contents.

2. This affidavit is made upon information and belief, the sources of which are official documents of HDA, the City Planning Commission ("CPC") and the Board of Estimate ("Board"), as well as other agencies of the City and employees of those agencies, and is submitted in opposition to the application of plaintiffs for a preliminary injunction enjoining and restraining defendants from construction and funding of any further project sites in the West Side Urban Renewal Area and specifically with the construction and funding of sites 30 and 4 in that Area, and from admitting more low income and welfare occupants to housing in the Area in ratios other than that delineated in the West Side Urban Renewal Plan, and from

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION  
TO PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

making any further changes or modifications of that Plan.

3. I repeat the plaintiffs' demand for relief to emphasize to the Court is broad and sweeping nature which, in effect, seeks to completely stop all housing activity in the West Side Urban Renewal Area. In various stages of planning at this point is housing to be constructed or rehabilitated on fifteen (15) sites in the West Side Area, with total projected dwelling units numbering approximately 2,628.

Some Background

4. The West Side Urban Renewal Area encompasses a 20 block site bounded by West 87th Street, West 97th Street, Central Park West and Amsterdam Avenue, in the Borough of Manhattan, and consists of a total area of 115.8 acres.

5. On June 6, 1956, the 20 block area was designated by the CPC, after public hearings, as "deteriorating", pursuant to Section 72-1 of the General Municipal Law of the State of New York. Following that, a study of the Area was undertaken by consultants under the supervision of the CPC. On the basis of that study completed in April, 1958, the CPC on June 18, 1958 (CP-14064) found, pursuant to Sec. 72-m of the General Municipal Law, that the designated area was a "deteriorating" area and thereby established its eligibility for a Federal Survey and Planning Advance and Capital Grant Reservation.

6. A Preliminary Plan for the Area, to be used as the guide for preparation of the detailed Final Urban Renewal

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION  
TO PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

Plan, then under consideration, was approved, after public hearing, by the CPC on July 15, 1959 (CP-14926) (Exhibit A) and by the Board on October 22, 1959 (Cal. No. 10) (Exhibit B).

7. The Preliminary Plan (annexed to plaintiffs' moving papers as Exhibit A) tentatively proposed development of approximately 7800 new dwelling units in the redevelopment areas, 400 of which were to be low income units; 2400 in the moderate rental range, and 5000 to be fully tax paying, unassisted units (Exhibit A, p. 4). At that time, moderate unit rentals were estimated at \$22.00 to \$29.00 per room and unassisted rentals ranged from \$35.00 to \$60.00 per room. The Plan also proposed a new school, certain street changes, and rehabilitation and conservation of existing dwellings.

8. It was emphasized in the Preliminary Plan that it was to be a guide to the final planning, intended to be further revised and refined in a Final Urban Renewal Plan (Exhibit A, p. 6).

9. At the public hearing on the Preliminary Plan, one of the objections made was inadequate provision of low and middle income housing in the new units proposed (Exhibit A, p. 7). In light of the statement in the original study that in considering a policy of varied housing facilities "there should be sufficient flexibility so that the proportions of the different types of accommodations provided -- public low rent housing, middle income cooperative and rental housing, and private rental housing -- may be varied according to the conditions and needs

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

of the particular renewal area" and in considering as well the goal of community participation (Exhibit A, p. 9), the CPC recommended modifications to increase the low rent units from 400 to 600, to provide 200 more low rent units in the rehabilitation areas, and to increase the tax-abated, moderate rental (\$21.00 to \$29.00 per room) to 3,600 units and to reduce the full tax paying units to 3,600.

10. The Board considered the Preliminary Plan at public hearings on September 17, 1959 (Cal. No. 23) and October 22, 1959 (Cal. No. 10), and in its resolution approving that Plan in principle (Exhibit B), recommended, inter alia, the following:

A. That the Urban Renewal Board study the income levels of people in the redevelopment and rehabilitation areas and based on that study, provide an increased number of middle income units and low rent units within the project area more in line with the needs of the people in these categories, and

B. That the minimum goals for low rent shall be 1,000 units and for middle income 4,200 units.

11. The Final Plan was submitted to the CPC by the Housing and Redevelopment Board ("HRB") on April 25, 1962. That Plan included, in three stages of development, provision for 7,800 new units, as follows:

A. 800 new low rent public housing units;  
B. 4,200 middle income units, 15% of which were to be available at rents comparable to public housing, and

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

C. 2,800 fully tax paying units, privately  
financed.

In addition, there was to be rehabilitation of approximately 3,100 units, of which 200 were to low rent housing, and conservation of about 3,600 units requiring no major rehabilitation.

12. Significantly, it should be noted that in the 1962 Plan, it was proposed that the Area have at least 1630 low rent units. Contrary to the Gaynor Study (annexed to plaintiffs' moving papers) which states that the 1962 Plan provided for only 800 low rent units (Gaynor Study, p. 2), the Plan actually provided for 800 low rent units, 200 rehabilitated units low rent and 630 units in moderate income buildings with rentals comparable to public housing. The reference to a Title I conventional development of 2525 units and a public housing project with 2193 units (Gaynor Study, p. 3), obviously relates to Park West Village and Frederick Douglass Houses, respectively, both of which are wholly outside the designated urban renewal area boundaries.

13. The Final Plan proposed at the time, that the low rent units be developed on sites 15, 25, 29 and 38, that 200 low rent units be developed in rehabilitated dwellings and that the balance of 630 "skewed rent" units be made available in moderate and middle income housing to be erected at rentals comparable to those in low-rent public housing - approximately \$18.00 per room per month (See CPC report, CP-17329 dated May 29, 1962, Exhibit C). The

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

Gaynor Study (p. 3), in describing the current concept, states that the "skewed rent" concept came into being in 1972, and that in 1972 the public housing projects in the Area were increased from 2 to 6. Both of these statements are obviously erroneous, since both "skewed rentals" and four (4) public housing projects were provided in the 1962 Plan.

14. At the CPC hearing, objection was made to various proposals in the Plan and particularly, to the need for more low rent units, varying from 2,000 to 4,000, with 2,500 most frequently recommended (Exhibit C, p. 9). HRB was urged to take advantage of State legislation which, if passed, might permit 20% of the middle income units to be made available at rentals comparable to those in low rent public housing (Exhibit C, p. 10).

15. CPC certified its unqualified approval of the Final Plan on May 29, 1962 (Exhibit C, p. 12), and the Board, after public hearing, approved the Plan on June 26, 1962 (Cal. No. 5) (Exhibit D).

16. Several days prior to the Board's hearing on the Final Plan, then Mayor Wagner issued a directive committing the City to at least 2,500 low income units in the West Side Urban Renewal Area. This was to be done by increasing the number of new middle income units to be built in lieu of certain fully tax paying projects, increasing the percentage of low rent units in those buildings from 15% to 20%, and rehabilitation of brownstones by the Housing Authority. This

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

commitment is further evidenced in a statement to the Board at its public hearing by Herman Badillo, then Deputy Commissioner of Relocation for the City, at which time he repeated the Mayor's directive for 2,500 low rent units in the Area. Those units, as well as approximately another 1,000 in adjacent areas were to be reserved for site residents of the West Side Area displaced by the redevelopment and rehabilitation.

17. The rehabilitation and redevelopment program for the West Side Area involved displacement of 6,344 persons in three stages. Relocation from Stage I involved 3,326 households, 2,707 from redevelopment areas and 619 from rehabilitation areas; Stage II involved 1,426 households, 770 from redevelopment and 656 from rehabilitation areas, and Stage III, 1,592 households, 827 from redevelopment and 765 from rehabilitation areas (See also Exhibit C, p. 8). The total of 6,344 was arrived at by adjusting for relocation which had already taken place by advanced work done in the Area.

18. Of the 3,326 households to be displaced in Stage I, only 2,485 were eligible for public housing on the basis of income only at rents under \$20.00 per room per month. The City was committed to giving residents of the Area a first priority to remain there or return after displacement. In the entire redevelopment and rehabilitation area, 4,739 households were eligible for public housing at rentals under \$20.00 per room, on the basis of income only. The need for low rent housing resources was quite evident at the very early stages of the West

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

Side Area development.

19. It should also be noted that the 2,500 low rent unit committment made by the City in 1962 has been recognized continually since that time by HRB and its successor, the Housing and Development Administration ("HDA"), as well as by CONTINUE, the group which is, simultaneously with this application, seeking to intervene in this action, and demanding the same relief as the plaintiffs herein, in a memorandum dated November 17, 1966.

20. The Final Plan was amended, after public hearings by the CPC on October 9, 1963 (Cal. No. 45) (Exhibit E), and by the Board, after public hearing, by resolution dated November 21, 1963 (Cal. No. 12).

21. This amendment designated six (6) areas occupied by 36 buildings in the West Side Area for rehabilitation by the New York City Housing Authority ("Authority") for persons and families of low income. This amendment added 236 units of low rent public housing to the Area.

22. The Plan was again amended, after public hearing by the CPC on September 15, 1964 (Cal. No. 55) (Exhibit F) and by the Board, after public hearing, on December 3, 1964 (Cal. No. 11) (Exhibit G).

23. This amendment provided:

A. Sites 12, 13 and 41, previously approved for fully tax paying housing were changed to partially tax exempt housing.

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

B. Site 36, formerly fully tax paying was changed to public housing.

C. Several changes in zoning room controls, maximum floor areas, and parcel or site sizes.

D. Addition of a minor changes provision in the Plan.

24. The CPC report (Exhibit F, p. 4) states, in connection with increasing the units for public housing and middle income housing:

"In this connection it is noted that in its report approving the Final Plan, the Commission stated: 'There is no method by which we can predict the exact proportions in which to allocate the number of dwelling units at each rental level in order to achieve the broad objective of the Urban Renewal Plan'. "This objective was defined as: 'realizing the exceptional potential of this area to provide a highly desirable residential neighborhood for a broad cross-section of our population'."

25. That statement by the CPC clearly demonstrates the built in flexibility of the Plan, and the need to continually reevaluate the needs of the Area in relation to its development in order to achieve the broad goals of the Plan.

26. The Plan was again amended, after public hearing, by the CPC on September 15, 1965 (Cal. No. 44) (Exhibit H), and approved by the Board, after public hearing, on October 14, 1965 (Cal. No. 24).

27. This amendment decreased the size of Site 23 by deleting Lot 32 therefrom and redesignated Lot 32 for rehabilitation,

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

and also deleted the requirement for widening certain roadways and sidewalks in the Area.

28. The Plan was again amended, after public hearing by the CPC on September 7, 1966 (Cal. No. 40) (Exhibit I), and approved by the Board, after public hearing, on December 9, 1966 (Cal. No. 4).

29. This revision provided for:

A. Redesignation of parcels 5 and 10, formerly fully tax paying, to moderate rental.

B. Redesignation of parcel 36, formerly low rental public housing, to moderate rental.

C. Parcels 18 and 37, formerly to be redeveloped, changed to rehabilitation.

D. Parcel 24 (The Trinity School Site) approved for combined residential and school development.

E. Several other changes as outlined in the CPC report (Exhibit I).

The Trinity Contract

30. By contract dated as of June 20, 1968, plaintiff Trinity Episcopal School Corporation ("Trinity School") entered into an agreement with the City of New York ("City") in connection with the redevelopment of site 24 in the West Side Area, with a combined use for the site. An addition to its existing school facility was to be constructed by Trinity School at grade level and 200 units of middle income housing was to be constructed within the air rights above the school facility. A copy of this contract is

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

annexed as Exhibit B to plaintiffs' moving papers.

31. Annexed to and made part of this contract is, inter alia, the fourth revision of the West Side Urban Renewal Plan, approved by the CPC and the Board in 1966, which is referred to in the contract as Schedule C-1.

32. Schedule C-1 provides, on page 28 thereof, Item F, as follows:

"This Urban Renewal Plan may be modified at any time by the City of New York provided that if modified after the disposition of any land in the project area such modification must be consented to in writing, by the purchaser or lessee or their successors in interest of the specific property covered by the modification. This shall not be construed to require the consent of the purchaser or lessee or their successors in interest of any other parcel in the project area."

33. The affidavit of Eugene J. Morris, annexed to the moving papers, states on p. 6 that the consent of plaintiffs was required under Item R of the Plan and quotes that Item. However, there is no Item R in the Urban Renewal Plan (Schedule C-1). Item R does appear in Exhibit D to the contract, entitled "Final Plan (Urban Renewal Plan) for the Rehabilitation Demonstration Pilot Project in the West Side Urban Renewal Area - Project N.Y. D-5". A reading of the description of the Pilot Project (Exhibit "A" of Exhibit D) makes it crystal clear that neither plaintiff Trinity School or plaintiff Trinity Housing Company, Inc. ("Trinity Housing") are located in the Pilot Project Area. Both plaintiffs are, therefore, subject to the provisions of Item F of Schedule C-1 of the Urban Renewal Plan. Since neither

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

is the owner or lessee of any of the sites modified subsequent to the date of their contract with the City (Sites 30 and 4, in particular), their consent to the modifications is not required.

34. Moreover, on page 20 of Schedule C-1, in the first complete paragraph on that page, it is stated that the Final Project Plan (Schedule D annexed to the contract) is deemed to be merged with the Final Urban Renewal Area, and that the Final Pilot Plan is incorporated into the Final West Side Area Plan. Item F in the larger West Side Area Plan is thus applicable to the Pilot Plan as well, and supercedes the language in Item R of the Pilot Plan. In addition, Item R is dated April, 1962 and Item F is dated September, 1963.

Sites 4 and 30

35. On July 15, 1970, the CPC held a public hearing in connection with a Plan and Project submitted by the Authority for development on Site 4 in the West Side Area. This site covers the blockfront between West 96th and West 97th Streets and Columbus Avenue, at the northern end of the Renewal Area. It is fully five (5) blocks from the Trinity site (Site 24). The Plan and Project (Exhibit J) proposes construction of 264 units of public housing, with 41% of the units to be designed for the aged (108 units). This project is to be a combined occupancy project in combination with the construction of Public School 209 under the auspices of the New York City Educational Construction Fund.

36. In connection with its consideration of the Authority's Plan and Project pursuant to Section 150 of the Public

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

Housing Law of the State of New York, on August 10, 1970, CPC approved a change in the West Side Urban Renewal Plan, and makes reference to that approval in its report of August 12, 1970 (CP-21224) (Exhibit K).

37. The Board, after public hearing, approved the Authority's Plan and Project for Site 4 and the report of the CPC, pursuant to Section 150 of the Public Housing Law on September 28, 1970 (Cal. No. 164).

38. On June 23, 1971, the CPC held a public hearing in connection with a Plan and Project submitted by the Authority for development of Site 30 in the West Side Urban Renewal Area. The Plan and Project (Exhibit L) proposes construction of 160 units of low income public housing in 16 residential stories. Considered by the CPC at the same time was a request from HDA for a change in the use of Site 30 from middle income housing to low income housing. Moreover, Community Planning Board No. 7, whose jurisdiction covers the subject area, approved the requested change in use designation. On August 11, 1971, the CPC approved the submitted Plan and Project for Site 30 and a change in the West Side Plan for the use of that site for public housing (CP-21654) (Exhibit M).

39. The Board, after public hearing, approved the Authority's Plan and Project for Site 30 and the report of the CPC, on November 11, 1971 (Cal. No. 21).

40. Site 4 has not been funded for construction and is not completely cleared. Site 30 has been funded pursuant to

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

an amendment to the Annual Contributions. Contract between the Authority and the Federal Government, as of December 29, 1972. The Estimated Total Development Cost is in excess of \$6,000,000. The site is completely cleared and negotiations are in progress with a developer for construction.

41. Plaintiffs in support of their application for a preliminary injunction claim that a) the City has violated the Urban Renewal Plan by placing more low-income units in the area than called for by the Plan, thereby allegedly destroying the basic concept of the plan which called for an economically and ethnically integrated area; and b) that before changes were made in the Plan, plaintiffs' consent was necessary. I have discussed the consent issue earlier in this affidavit and that requirement is clearly not applicable under the contract between Trinity School and the City. The remaining issue then requires further examination.

42. I have traced the history of the Plan and the Area from its inception in the mid fifties to its current status in an effort to point out to the Court the substantial number of changes made following development of the original concept. All of the major changes were the subject of public hearings before both CPC and the Board and also the subject of approval by HUD. The four amendments to the Plan through 1966 predate the Trinity School, Karlen and Hudgins contracts of 1963. Clearly, they purchased and developed or rehabilitated their properties with the knowledge that the original plan of 1962 had changed substantially

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

in the intervening six (6) years. Similarly, there was no guarantee that further changes would not be made following 1968 if changing times and needs so required.

43. The West Side Plan never contemplated development in a vacuum or that the Area would remain static. The provision in Item F of the Plan discussed earlier, clearly contemplated the possibility of modification and change and plaintiffs were all subject to the terms of that provision in the Plan.

44. The Gaynor Study alleges that HDA schedules construction in the ~~Area~~ provides for 38.4% low income units (2850) and 61.6% moderate income units (4,567) and no conventional or privately financed units. Additional computations which appear to include new construction as well as rehabilitation show low income at 61% (4,750 units) and moderate income at 39% (3,028 units). These conclusions are both inaccurate and based on erroneous assumptions.

45. The four sites scheduled for new low income public housing construction in the Area, namely Sites 25, 29, 38 and 15 were completed in 1965 and total 795 units. Rehabilitation of structurally sound units by the Authority added 236 more low income units as well as an additional 40 at 54 West 94th Street. 851 additional low income units result from various programs used to produce such units in middle and moderate income buildings, with the percentage of low rent units in these buildings varying from 13% to 30%. Trinity's own project of 200 units contains 57 low rent units provided under the Authority's Leased Public Housing Program.

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

46. Currently, about 1,646 low income dwelling units have been constructed in the Area and another 1,082 are in planning, including 160 on Site 30 and 270 on Site 4. Of course, units in the planning stage cannot be determined with any precision and the figures are always subject to change to meet current needs and new programs.

47. Currently, approximately 3,026 middle and moderate income units have been constructed and another 1,546 are in planning.

48. Rehabilitation in the Area has produced or may produce approximately 3,626 units, 276 of which are low income and the balance, moderate and middle income. The conservation areas, mostly along Central Park West, contain 3,623 units of housing, none of which is low income.

49. Thus, of a total of about 14,500 units to be contained in the entire West Side Urban Renewal Area, about 3,000, or slightly more than 20% are to be low income.

50. The City is committed in all new construction of middle and moderate income housing in the Area to no more than 30% of those units for persons of low income. In connection with the three (3) middle income buildings on Sites 20, 21 and 22, ✓ where a percentage of the moderate rental units are occupied by tenants receiving welfare assistance, in addition to 30% of the units being rented under the Authority's Leased Housing Program, the City will, as turnover in the units takes place, reduce the low income portion to 30%, and maintain that percentage.

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

51. The West Side Urban Renewal Plan has been amended and modified in the eleven (11) years since the 1962 Plan due to changing needs in the Area, and changes in the availability of financing and housing programs. By way of example, in 1962, the only program available to place low income families in middle of moderate income buildings was the "skewed rent" concept. Since then, and with the advent of the Leased Public Housing Program, Capital Grant Program and Rent Supplement Program in addition to "skewed rentals", the City has obtained additional flexibility to meet the ongoing and changing needs of the Area. Fully tax paying sites were reduced through amendments of the Plan over the years and then finally dropped from the program because of the inability of sponsors to obtain financing. From 1960 to the present, construction and financing costs rose beyond any point which might have been foreseeable in the early years of the Plan. While in 1960, the highest anticipated rental in a fully tax paying development was to be \$60.00 per room per month, recently tax-abated developments have been completed with rentals from \$70.00 to \$80.00 per room per month. Middle and moderate income rentals envisioned in the early days of the West Side Area development were in the neighborhood of \$30.00 per room per month. Rentals today in 236 subsidized moderate income buildings approximate \$40.00 to \$45.00 per room per month. As costs and interest rates soared, resulting in rentals which made many middle income apartments unmarketable, it became necessary for the City to revise and reevaluate its thinking as to the development of the West Side

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

Area. Plaintiffs, as well as the proposed intervenors, were well aware of changes in the Plan which had taken place prior to their entering into contracts with the City and also of the language in the contract which deals with Plan modifications.

52. It should also be noted that while construction costs and interest rates were forcing an upward spiral of rentals in middle and moderate income buildings developed in the West Side Area, there remained as the City's responsibility a priority to construct housing in the Area for former site tenants.

53. It is important to note also that the same 160 units on Site 30, originally planned as moderate and middle income, are now planned as low income. In other words, the structure size remains constant, but the income level of the tenants will be changed. But of the 160 middle and moderate income units originally to be constructed, 30% or 48 of those units would have been allocated as low rent units in any event. On Site 4, as previously indicated, the Authority's Plan and Project contemplates 108 of the 264 units to be constructed will be for the aged.

54. It has been the City's desire from the inception of the West Side Urban Renewal Plan, to date, to provide in that Area, an economically and ethnically balanced community. The task over the past 11 years has been far from simple, but the results overall have been consistent with that desire. There remains much work to be done. To grant plaintiffs' request would put a halt to that work and to construction of vitally needed

AFFIDAVIT OF DAVID McGREGOR IN OPPOSITION TO  
PLAINTIFFS' APPLICATION FOR A TEMPORARY INJUNCTION

housing in this City. That need far outweighs any alleged harm plaintiffs may assert.

(David McGregor)  
David McGregor

Verified September 11th, 1973

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

LAW DEPARTMENT  
MUNICIPAL BUILDING  
NEW YORK, N. Y. 10007

ADRIAN P. BURKE, Corporation Counsel

May 28, 1974

Hon. Irving Ben Cooper  
Judge, United States District Court  
Southern District of New York  
Judges Chambers  
Foley Square  
New York, New York

Re: Trinity v. Romney  
71 Civil 4315

Dear Sir:

I have read the Court transcript of May 20, 1974, particularly those portions relating to your Honor's request for certain information, as read into the record by plaintiffs' counsel. In addition, I have reviewed with Mr. Liner of my office and with co-counsel in this litigation, the discussions in Court relative to those items and an alleged understanding or agreement which Mr. Morris claims he had with me in connection with furnishing the particulars of those items.

I want to make it clear to the Court that there was never any understanding or agreement between Mr. Morris and myself as to the ten (10) items listed. During the settlement negotiations, Mr. Morris requested, as part of his settlement "demand" or "package", a certified list of relocatees entitled to relocation in the West Side Urban Renewal Area based on priority arising out of displacement. This list was to be certifiable as of no later than January 1, 1973. The City agreed to furnish that information as part of the effectuation of the settlement, but after those discussions broke down, no further request was made by Mr. Morris for this information until May 20, 1974, the last day of the trial. A list of relocatees is enclosed herewith.

In addition, Mr. Morris did request of me during the trial, the number of welfare assisted families in Columbus Manor, Westwood House and Leader House only, and his interest was in the assisted families residing in the

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

seventy percent (70%) middle income units in those buildings. I stated that I would try to obtain those figures for him. Since they could not be supplied by HDA, Mr. Liner visited the Department of Social Services 30th Street Income Maintenance Center to obtain that information. It must be emphasized that welfare assistance encompasses a broad range of programs including aid to the elderly, blind and disabled, and covers partial as well as full assistance. The Department of Social Services has also informed us that the program involving aid to the elderly and disabled (SSI), as of January 1, 1974 became completely subsidized by the Federal government, so that these figures are not part of City records. Moreover, the numbers constantly change as families become eligible and ineligible for assistance and, in some cases, a family may receive assistance on a temporary basis only, as need arises. Thus, it is submitted that welfare numbers should be examined in the framework to which they relate. A Schedule of the number of families receiving welfare assistance in the three projects referred to above is enclosed as well as a Schedule prepared by the New York City Housing Authority detailing welfare assisted families in low income housing under its jurisdiction.

The City does not have records as to the ethnic breakdown of welfare assisted families, "squatter" families or relocatee families in the West Side Urban Renewal Area.

With respect to Item seven, HDA records reveal 274 "squatter" families residing in the West Side Urban Renewal Area. These families have rental agreements with the City, are provided with essential services, are subject to removal when the site on which they reside is ready for redevelopment, and will not receive relocation benefits or priority.

With respect to Items nine and ten, Schedules of income limits applicable to Section 236 subsidized housing and public housing from 1971 to present are enclosed.

Finally, it should be noted that while the requested information is furnished pursuant to the Court's direction and in the ongoing spirit of cooperation among the parties to this litigation urged by your Honor, plaintiffs, pursuant to a broad and sweeping subpoena, were given the opportunity to examine all HDA records relevant to the West Side Urban Renewal Area, and to obtain copies of those items they desired, prior to the trial. This opportunity

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

continued during the trial. As your Honor quite correctly observed, the lack of this information was never brought to the attention of the Court or the other parties to the litigation during the course of the trial, except as I have described herein, until the very last day. Furthermore, the defendants respectfully submit that a number of the items, although furnished as requested, are not relevant to the issues involved here.

Very truly yours,

ADRIAN P. BURKE  
Corporation Counsel

By: Hadley W. Gold

HADLEY W. GOLD  
Assistant Corporation Counsel  
In Charge of Housing and  
Real Estate Division

cc: Demov & Morris, Esqs.  
David P. Land, Esq.  
John De P. Douw, Esq.

Encs.  
HWG:ds

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPERWest Side Urban Renewal AreaRelocatees

- A. Relocatees in the West Side Urban Renewal Area on date of vesting of title in the City of New York 5,838
- B. Relocatees placed in housing in the West Side Urban Renewal Area to date 1,900 to 2,000
- C. Relocatees presently residing on temporary holding sites within the West Side Urban Renewal Area 114
- D. Relocatees presently residing off-site who have expressed an interest to return 728
- E. Relocatees listed on HDA fiscal list in addition to above (approximately) 2,500
- F. Relocatees, individuals and families, not locatable (approximately) 480

Trinity v. Romney

71 Civil 4315

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

Trinity v. Romney

71 Civil 4315

WEST SIDE URBAN RENEWAL AREA

A. Total Welfare assisted families (various programs)  
in Leader House, excluding SSI (elderly and disabled): 62 \*

B. Total Welfare assisted families (various programs)  
in Columbus Manor, excluding SSI (elderly and disabled): 50 \*

C. Total Welfare assisted families (various programs)  
in Westwood House, excluding SSI (elderly and disabled): 27 \*

\* Totals include units leased under Section 23 by NYC  
Housing Authority

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

9197

West Side Urban Renewal Area

Units Leased under Section 23 by NYC Housing Authority

<u>Project</u>	<u>No. of Units Leased</u>	<u>Families Receiving Public Assistance</u>			<u>SS1</u>
		<u>F.H. Welfare</u>	<u>Supplemental Welfare</u>	<u> </u>	
Tower West	60	23	1	0	
New Amsterdam	53	25	0	2	
Columbus House	72	18	5	10	
Columbus Plaza	61	16	1	7	
Leader House	84	33	2	0	
Westward House	35	6	0	3	
Trinity House	57	7	1	6	
Townhouse West	<u>14</u>	<u>0</u>	<u>1</u>	<u>0</u>	
	<u>436</u>	<u>128</u>	<u>11</u>	<u>28</u>	

Received 5/6/74  
E Lee

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

Public Housing Projects in West Side Urban Renewal Area

<u>Funding</u>	<u>Project</u>	<u>No. of Units</u>	<u>Tenants Receiving Public Assistance as of 6/73</u>
NYS-52K	Rehabilitation	236	82
NYS-76	48-54 W 94 St. Rehab	40	8 (est.)
NY5-56	{ 120 W 94 St 74 W. 92 St 589 Amsterdam Ave	{ 70 168 158	{ 106
NYS-107	Wise Towers	<u>399</u>	117
Project	Total	1071	

Projects Outside WSWURA

830 Amsterdam Ave	159	79
De Hostos	223	111
Douglass Addition	<u>135</u>	38 (est.)
	517	

Proposed Projects

Site 30	160
Site 4	<u>270</u>
	430

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER

-18-

INCOME, RENT AND MORTGAGE LIMITS IN NEW YORK CITY  
UNDER FHA 221(d)(3) AND 236 PROGRAMS

<u>Number of Bedrooms</u>	<u>MORTGAGE LIMITS</u>		<u>OCCUPANCY LIMITS</u> <u>Number of Persons</u>
	<u>Elevator</u>	<u>Non-elevator</u>	
0	\$ 15,841	\$ 13,340	1 - 2
1	22,511	18,758	1 - 2
2	26,680	22,511	2 - 4
3	33,350	28,347	4 - 6
4 or more	37,934	32,098	6 - 8

ADJUSTED ANNUAL INCOME LIMITS FOR INITIAL OCCUPANCY

<u>Number of Persons</u>	<u>236</u>		<u>221(d)(3)</u>	<u>Rent Supplement</u>	<u>Housing Authority Leasing</u>
	<u>(135% of P.I.I.)</u>	<u>Exception (90% of BMIR)</u>			
1	\$ 5,835	\$ 7,000	\$ 7,750	\$ 4,320	\$ 4,320
2	7,390	8,450	9,400	5,472	5,472
3	8,555	9,950	11,050	6,336	6,336
4	8,555	9,950	11,050	6,336	6,336
5	10,890	11,450	12,700	7,500	8,064
6	10,890	11,450	12,700	7,500	8,064
7	11,455	12,900	14,350	7,500	8,484
8	11,455	12,900	14,350	7,500	8,484
9 or more	11,910	12,900	14,350	7,500	8,820

MONTHLY RENT LIMITS, INCLUDING GAS & ELECTRICITY

<u>Number of Bedrooms</u>	<u>236</u>	<u>221(d)(3)</u>	<u>Rent Supplement 2/</u>	<u>Housing Authority Leasing</u>
	<u>Basic 1/</u>	<u>BMIR</u>		
0	\$ 112	\$ 129	\$ 125	\$ 105
1	133	157	155	145
2	157	184	177	170
3	196	212	207	200
4	207	239	221	245
5	217	239	221	285

1/ Maximum basic rent administratively acceptable to HDA. Eligible tenant pays either basic rent or 25% of income whichever is higher. Thus the most an eligible tenant can pay is \$122, \$154, \$178, \$227, \$239 and \$248 for 0, 1, 2, 3, 4, or 5 bedroom apartments respectively, unless the tenant is approved for the exception limit. Should FHA permit the entire project to be an "exception" project, these are the basic rents that would be accepted as economically feasible by HDA.

2/ Applicable to FHA-MIR, Mitchell-Lama, Municipal Loan, and tax abated projects.

## POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK CITY TO HON. IRVING BEN COOPER

INCOME, RENT AND MORTGAGE LIMITS IN NEW YORK CITY  
UNDER FHA 221 (d) (3) AND 236 PROGRAMS

Number of Bedrooms	MORTGAGE LIMITS		OCCUPANCY LIMITS Number of Persons
	Elevator	Non-elevator	
0	\$ 15,841	\$ 13,340	1 - 2
1	22,511	18,758	1 - 2
2	26,680	22,511	2 - 4
3	33,350	28,347	4 - 6
4 or more	37,934	32,098	6 - 8

## ADJUSTED ANNUAL INCOME LIMITS FOR INITIAL OCCUPANCY

Number of Persons	236		221(d)(3) BMIR	Rent Supplement	Housing Authority Leasing
	236 (135% of P.H.)	Exception (90% of BMIR) 1/			
1	\$ 5,835	\$ 7,550	\$ 8,400	\$ 4,320	\$ 4,320
2	7,390	9,200	10,200	5,472	5,472
3	8,555	10,800	12,000	6,336	6,336
4	9,555	10,900	11,000	6,336	6,336
5	10,890	12,400	13,800	7,500	8,064
6	10,890	12,400	13,800	7,500	8,064
7	11,455	14,050	15,600	7,500	8,484
8	11,455	14,050	15,600	7,500	8,484
9 or more	11,910	14,050	15,600	7,500	8,820

## MONTHLY RENT LIMITS, INCLUDING GAS &amp; ELECTRICITY

Number of Bedrooms	236		221(d)(3) BMIR	Rent Supplement	Housing Authority Leasing
	236 135% of P.H. 2/	Exception 2/			
0	\$ 109	\$ 142	\$ 140	\$ 150.00	\$ 105
1	139	172	170	193.75	145
2	160	202	200	212.50	170
3	204	232	230	250.00	200
4	215	263	260	268.75	245
5	223	263	260	268.75	282

1/ For projects in processing and in initial "rent up" approval by HUD is required to go to the exception limits. Application may be made for individual exception tenants or where costs do not permit projects to be feasible unless exception limit rents are used, application may be made for an entire exception project. However, only 20% of the nationwide 236 allocation may be applied to exception limit tenants. After initial rent up, the income maximum for admission may be the exception limit, without prior approval by HUD.

2/ Maximum basic rents administratively acceptable to HDA, derived by applying 90% to 25% of maximum eligible incomes. Eligible tenants pay either basic rent or 25% of income whichever is higher. If the basic rent were set at or above 25% of maximum eligible income, most eligible tenants would be required to pay more than 25% of their incomes for rent and the project would not be marketable.

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPERIncome and Rent Limits in  
New York City  
under Subsidized Federal ProgramsADJUSTED ANNUAL INCOME LIMITS

<u>Number of Persons</u>	<u>236 Regular (135% of P.H.)</u>	<u>236 Exception (90% of BMIR)</u>	<u>Rent Supplement</u>	<u>Housing Authority Leasing</u>
1	\$ 5,835	\$ 7,550	\$ 4,320	\$ 4,320
2	7,390	9,200	5,472	5,472
3	8,555	10,800	6,336	6,336
4	8,555	10,800	6,336	6,336
5	10,890	12,400	8,064	8,064
6	10,890	12,400	8,064	8,064
7	11,455	14,050	8,484	8,484
8	11,455	14,050	8,484	8,484
9 or more	11,910	14,050	8,820	8,820

MONTHLY RENT LIMITS, INCLUDING GAS AND ELECTRICITY

<u>Bedrooms</u>	<u>236 Regular 20% of 25%</u>	<u>236 Regular 25% of Inc.</u>	<u>236 Exception 20% of 25%</u>	<u>236 Exception 25% of Inc.</u>	<u>Rent Supplement</u>	<u>Housing Authority Leasing</u>
0	\$ 109	\$ 121	\$ 142	\$ 157	\$ 150.00	\$ 132
1	139	154	172	191	193.75	185
2	160	178	202	225	212.50	217
3	204	227	232	258	250.00	253
4	215	238	263	292	268.75	310
5	223	248	263	292	268.75	357

Source: Dept. of Development, HDA, 9/18/72

**POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPER**

Income and Rent Limits in  
New York City  
under Subsidized Federal Programs

ADJUSTED ANNUAL INCOME LIMITS

Number of Persons	236 Regular (135% of P.H.)	236 Exception (90% of EMIR)	Rent Supplement	Housing Authority Leasing
1	\$ 7,155	\$ 7,550	\$ 5,300	\$ 5,300
2	9,180	9,200	6,800	6,800
3	10,530	10,800	7,800	7,800
4	10,530	10,800	7,800	7,800
5	11,070	12,400	8,200	8,500
6	11,475	12,400	8,500	8,500
7	11,880	14,050	8,800	9,200
8	12,285	14,050	9,100	9,200
9	12,555	14,050	9,300	9,600
10 or more	12,825	14,050	9,500	9,600

MONTHLY RENT LIMITS, INCLUDING GAS AND ELECTRICITY

Bedrooms	236 90% of 25%	Regular 5% of Inc.	236 90% of 25%	Exception 25% of Inc.	Rent Supplement	Housing Authority Leasing
0	\$ 134	\$ 149	\$ 142	\$ 157	\$ 150.00	\$ 152 147
1	172	191	172	191	193.75	185 145
2	197	219	202	225	212.50	217 232
3	208	231	232	253	250.00	253 263
4	223	247	263	292	268.75	310
5	235	262	263	292	268.75	357

Note: This table incorporates changes in Housing Authority Leasing income limits approved by HUD 12/72 and in rent supplements and 236 regular limits approved 1/73. Changes in EMIR limits, and thus in 236 exception limits have not yet been promulgated. The rents shown under regular limits are based on the 5-person income limits for 3 bedroom units, the 7-person income limits for 4 bedroom units and the 9-person income limits for 5 bedroom units.

Source: Department of Development, HDA, 1/19/73

POST TRIAL EXHIBIT - LETTER OF MAY 28, 1974, NEW YORK  
CITY TO HON. IRVING BEN COOPERINCOME and Rent Limits in  
New York City  
under Subsidized Federal ProgramsADJUSTED ANNUAL INCOME LIMITS

<u>Number of Persons</u>	<u>236 Regular (135% of P.H.)</u>	<u>236 Exception (90% of BMIR)</u>	<u>Rent Supplement</u>	<u>Housing Authority Leasing</u>
1	\$ 7,155	\$ 8,300	\$ 5,300	\$ 5,300
2	9,180	10,100	6,800	6,800
3	10,530	11,900	7,800	7,800
4	10,530	11,900	7,800	7,800
5	11,070	13,700	8,200	8,500
6	11,475	13,700	8,500	8,500
7	11,880	15,450	8,800	9,200
8	12,285	15,450	9,100	9,200
9	12,555	15,450	9,300	9,600
10 or more	12,825	15,450	9,500	9,600

MONTHLY RENT LIMITS, INCLUDING GAS AND ELECTRICITY

<u>Bedrooms</u>	<u>236 Regular</u>		<u>236 Exception</u>		<u>Rent Supplement</u>	<u>Housing Authority Leasing</u>
	<u>90% of 25%</u>	<u>25% of Inc</u>	<u>90% of 25%</u>	<u>25% of Inc</u>		
0	\$ 134	\$ 149	\$ 156	\$ 173	\$150.00	\$147
1	172	191	189	210	193.75	195
2	197	219	223	248	212.50	232
3	215	239	257	285	250.00	263
4	230	256	290	322	268.75	310
5	240	267	290	322	268.75	357

Note: This table incorporates changes in Housing Authority Leasing income limits approved by HUD 12/72, in rent supplements, 236 regular limits approved 1/73, and BMIR and 236 exception limits approved 2/73. The rents shown under regular limits are based on the 6-person income limits for 3-bedroom units, 8-person income limits for 4-bedroom units and 10-person income limits for 5-bedroom units.

POST TRIAL EXHIBIT - LETTER OF MAY 22, 1974, AUSTIN  
K. HALDENSTEIN TO HON. IRVING BEN COOPER

AUSTIN K. HALDENSTEIN  
REAL ESTATE

MEMBER  
THE REAL ESTATE BOARD  
OF NEW YORK, INC.

225 E 74th  
18 WEST 86TH STREET  
SUITE 2R  
NEW YORK, N.Y. 10024  
362-9600

May 22, 1974

Hon. Irving Ben Cooper  
Federal District Judge  
Federal District Court  
Foley Square  
New York, New York

Re: Trinity School v. Romney et al

Honorable Sir:

This letter is submitted in response to the direction of the Court contained at page 2162 of the minutes of the trial that I analyze the actual sales and transactions that I handled during the period subsequent to the spring of 1970. I testified that I did not have the figures with me at the time of my testimony, but I did conduct sales during that period, and the Court directed that I go back and check my records to analyze the sales that I handled as a basis for my testimony.

Annexed hereto and made a part of this letter is a statement of all of the sales that I conducted in the West Side Urban Renewal Area beginning with the first sale in early 1964 through 1973.

An analysis of these sales substantiates my testimony to the effect that there was an increase in values in the West Side Urban Renewal Area during the period from 1964 until 1969, and that a change occurred in the early Spring of 1970 when the squatters occupied apartments in the area. An analysis of the actual sales demonstrates that there was a sharp falling off in the number of sales beginning in 1970 and that the situation continued throughout 1973.

In fact, an analysis of the schedule of sales annexed indicates that there were no sales at all during the period from July, 1970 until September 21, 1971, a period of more than a year; and during the four year period from 1970 through 1973 there were a total of only 16 sales. This represents a sharp drop in the number of sales from those reported during the years 1965, 1966 1967, 1968 and 1969.

---continued

POST TRIAL EXHIBIT - LETTER OF MAY 22, 1974, AUSTIN  
K. HALDENSTEIN TO HON. IRVING BEN COOPERAUSTIN K. HALDENSTEIN  
REAL ESTATE

Hon. Irving Ben Cooper  
May 22, 1974  
page 2.

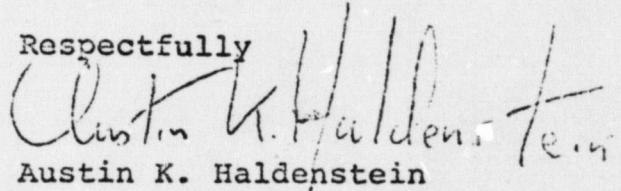
My analysis, based upon these sales and my direct personal experience and involvement with the market during the period from 1970 through 1973, establishes that there was a significant drop in values during that period, which can be approximated as follows:

In 1969, as shown on the schedule, the two sales of four-story brownstones for renovation on the second block averaged \$70,000. In 1972, a similar four story property for renovation on the second block sold for \$62,500 -- a decrease in value of over 10%.

In fact, there was only one property that I sold for renovation in the entire period 1970-1973. Of the 54 sales I participated in during the 1964-1969 period, 46 sales were for brownstones calling for either FHA-financed renovation or renovation. It is my opinion that potential purchasers no longer would undertake the large risk in renovating a property because of the adverse conditions in the Area beginning in 1970.

In addition to the virtual halt in sales of brownstones needing renovation, the lack of sales generally in the 1970-1973 period, I believe, resulted from (one) lack of buyers willing to purchase in the WSURA, and (two) most sellers of renovated houses were offered prices that did not meet their purchase plus renovation costs. Sellers were asked to take a loss, which I estimate at 10 to 20 per cent, or more. Naturally, most sellers refused to do this.

Respectfully

  
Austin K. Haldenstein

akh/j

POST TRIAL EXHIBIT - LETTER OF MAY 22, 1974, AUSTIN  
 K. HALDENSTEIN TO HON. IRVING BEN COOPER

AUSTIN K. HALDENSTEIN

REAL ESTATE

BROWNSTONE SALES NEGOTIATED BY AUSTIN K. HALDENSTEIN IN  
 THE YEARS 1964/1972 IN THE WEST SIDE URBAN RENEWAL AREA<sup>1</sup>

<u>Closing Date</u>	<u>Address</u>	<u>Location</u>	<u>No. Stories</u>	<u>Work to Be Done</u>	<u>Selling Price</u>
1/64	29 W. 87	Park block	five	Newly renovated	\$8,00
4/30/64	155 W. 95	2nd block	3 + Base.	Renovation	25,25
5/28/64	61 W. 90	Park block	3 + Base.	FHA renovation	26,00
6/16/64	149-151 W. 95	2nd block	2-3 + Base.	FHA renovation	42,00
9/28/64	113 W. 88	2nd block	four	Renovation	32,49
11/18/64	59 W. 89	Park block	3 + Base	FHA renovation	35,50
11/18/64	61 W. 89	Park block	3 + Base.	FHA renovation	27,50
2/1/65	115 W. 88	2nd block	four	Renovation	32,00
3/15/65	119 W. 87	2nd block	3 + Base.	Renovation	32,00
4/65	163 W. 95	2nd block	3 + Base.	Upgrading	43,25
4/1/65	157 W. 95	2nd block	3 + Base.	FHA renovation	26,00
6/22/65	129 W. 94	2nd block	3 + Base.	Renovation	26,50
10/1/65	54 W. 89	Park block	4 + Base.	Upgrading	82,00
10/8/65	52 W. 88	Park block	4 + Base.	FHA renovation	45,00
11/16/65	139 W. 87	2nd block	3 + Base.	Renovation	27,00
10/29/65	27 W. 89	Park block	4 + Base.	Renovation	45,00
4/66	36 W. 89	Park block	4 + Base.	Renovation	48,00
2/10/66	20 W. 90	Park block	4 + Base.	Renovation	46,00
4/18/66	111 W. 88	2nd block	four	Renovation	53,00
7/22/66	58 W. 88	Park block	4 + Base.	Renovation	47,50
9/12/66	35 W. 88	Park block	4 + Base.	Renovation	50,00
9/8/66	57 W. 89	Park block	4 + Base.	FHA renovation	49,50
9/8/66	55 W. 89	Park block	4 + Base.	FHA renovation	50,00
10/4/66	354 C.P.W.	Central Pk W.	five	Renovation	44,00
12/16/66	36 W. 88	Park block	4 + Base.	FHA renovation	60,00
12/30/66	123 W. 94	2nd block	3 + Base.	Renovation	30,00
11/15/66	44 W. 94	Park block	3 + Base.	Renovation	56,00
6/27/66	32 W. 88	Park block	4 + Base.	Renovation	55,00
3/15/67	34 W. 96	Park block	5 story	Upgrading	53,00
2/7/67	35 W. 89	Park block	4 + Base.	FHA renovation	55,00
2/15/67	25 W. 88	Park block	4 + Base.	Renovation	49,00
9/25/67	21 W. 94	Park block	3 + Base.	Renovation	50,00
9/10/67	34 W. 88	Park block	4 + Base.	FHA renovation	57,50
10/2/67	19 W. 87	Park block	4 + Base.	Renovation	50,00
11/29/67	63 W. 92	Park block	3 + Base.	Minor work	82,00
12/14/67	120 W. 88	2nd block	four	Renovation	40,00
1/30/68	132 W. 95	2nd block	3 + Base.	Renovation	34,50
2/26/68	24 W. 87	Park block	4 + Base.	Upgrading	69,00
4/10/68 (resale)	32 W. 88	Park block	4 + Base.	Renovation	62,00
5/15/68 (resale)	27 W. 89	Park block	4 + Base.	Renovation	60,00
5/5/68 (resale)	61 W. 90	Park block	3 + Base.	Renovation	42,00
5/13/68	135 W. 94	2nd block	3 + Base.	Renovation	31,00
7/10/68	71 W. 92	Park block	3 + Base.	FHA renovation	35,00
9/20/68	42 W. 89	Park block	4 + Base.	FHA renovation	60,00
9/27/68 (resale)	20 W. 90	Park block	five	FHA renovation	60,00
11/1/68	56 W. 91	Park block	five	Renovation	48,50

POST TRIAL EXHIBIT - LETTER OF MAY 22, 1974, AUSTIN  
 K. HALDENSTEIN TO HON. IRVING BEN COOPER

AUSTIN K. HALDENSTEIN  
 REAL ESTATE

page 2. (brownstone sales negotiated in the years 1964/1972)

<u>Closing Date</u>	<u>Address</u>	<u>Location</u>	<u>No. Stories</u>	<u>Work to Be done</u>	<u>Selling Price</u>
1/69(resale)	34 W. 96	Park block	five	Upgrading	86,000
1/31/69	143 W. 94	2nd block	four	Renovation	60,000
3/14/69	24 W. 89	Park block	4 + base.	Upgrading	88,000
3/19/69	56 W. 88	Park block	4 + base.	Renovation	62,000
4/17/69	24 W. 90	Park block	4 + base.	Renovation	70,000
7/15/69	49 W. 90	Park block	five	FHA renovated	132,000
10/1/69	140 W. 88	2nd block	four	Renovation	80,000
12/30/69	48 W. 91	Park block	five	FHA renovation	85,000
4/14/70	38 W. 89	Park block	4 + base.	Upgrading	100,000
5/27/70	38 W. 95	Park block	3 + base.	Upgrading	117,500
7/70(resale)	163 W. 95	2nd block	3 + base.	Upgrading	85,000
9/21/71	43 W. 95	Park block	4 + base.	Upgrading	72,000
9/71(resale)	63 W. 92	Park block	4 + base.	Upgrading	100,000
10/71(resale)	123 W. 94	2nd block	four	Upgrading	127,500
11/71(resale)	48 W. 91	Park block	five	Newly renovated	200,000
1/72	141 W. 94	2nd block	four	Newly renovated	185,000
2/72	28 W. 87	Park block	five	Upgrading	135,000
3/72	132 W. 87	2nd block	four	Renovation	62,500
9/72	28 W. 89	Park block	five	Newly renovated	185,000
11/72	36 W. 95	Park block	3 + base.	move-in condition	88,500
6/14/73	10 W. 95	Park block	five	Upgrading	125,000
11/16/73	140 W. 88	2nd block	3 + base.	Newly renovated	100,000
12/14/73	138 W. 88	2nd block	3 + base.	Upgrading	85,000
9/73	69 W. 92	Park block	four	move-in condition	109,860

<sup>1</sup> Technically, the south side of 87th Street is not considered part of the WSURA. It is included in this tabulation to reflect the general practice amongst West Side brokers to list houses on the south side of 87th Street within the framework of the general WSURA.

Please note that 53 sales were to purchasers who planned to live in their own brownstones; of these 50 were to share their brownstones with tenants.

No sales listed were city-owned brownstones.

<sup>2</sup> The sale of this building was negotiated by the firm I became associated with, and has been personally managed by me for 10 years.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x  
71 Civ. 4315

SAME TITLE

NOTICE OF APPEAL

-----x

Notice is hereby given that TRINITY EPISCOPAL SCHOOL CORPORATION and TRINITY HOUSING COMPANY, INC., plaintiffs above named, hereby appeal to the United States Court of Appeals for the Second Circuit from the judgment of District Judge Irving Ben Cooper in favor of defendants entered in the action on the 15th day of November, 1974.

DEMOV, MORRIS, LEVIN & SHEIN

By \_\_\_\_\_  
A Member of the Firm  
40 West 57th Street  
New York, New York 10019

Attorneys for Plaintiffs

TO:

HON. PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
United States District Courthouse  
New York, New York 10007

Attorney for Defendants

DAVID P. LAND, ESQ.  
Assistant United States Attorney  
of Counsel

HON. ADRIAN P. BURKE  
Corporation Counsel for the City  
of New York  
Municipal Building  
New York, New York 10007

NOTICE OF APPEAL

Attorney for City of New York

HADLEY W. GOLD, ESQ.  
ROBERT F. LINER, ESQ.  
Assistant Corporation Counsels  
Of Counsel

MARTTIE L. THOMPSON, ESQ.  
Community Action for Legal Services, Inc.  
335 Broadway  
New York, New York 10013

Attorney for Intervening Defendant

JOHN de P. DOUW, ESQ.  
Of Counsel

HON. LOUIS J. LEFKOWITZ,  
Attorney General, State of New York  
World Trade Center  
New York, New York

Attorney for State of New York

THOMAS R. McLOUGHLIN, ESQ.  
Assistant Attorney General  
Of Counsel

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x  
71 Civ. 4315

SAME TITLE

NOTICE OF APPEAL

-----x

Notice is hereby given that ROLAND H. KARLEN,  
ALVIN C. HUGGINS and CONTINUE, Intervening Plaintiffs above  
named, hereby appeal to the United States Court of Appeals for  
the Second Circuit from the judgment of District Judge Irving  
Ben Cooper in favor of defendants entered in the action on the  
15th day of November, 1974.

DEMOV, MORRIS, LEVIN & SHEIN

By

A Member of the Firm  
40 West 57th Street  
New York, New York 10013

Attorneys for Intervening  
Plaintiffs

TO:

HON. PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
United States District Courthouse  
New York, New York 10007

Attorney for Defendants

DAVID P. LAND, ESQ.  
Assistant United States Attorney  
Of Counsel

HON. ADRIAN P. BURKE  
Corporation Counsel for the  
City of New York  
Municipal Building  
New York, New York 10007

NOTICE OF APPEAL

Attorney for City of New York

HADLEY W. GOLD, ESQ.  
ROBERT F. LINER, ESQ.  
Assistant Corporation Counsel  
Of Counsel

MARTTIE L. LIPSON, ESQ.  
Community Action for Legal Services, Inc.  
335 Broadway  
New York, New York 10013

Attorney for Intervening Defendant

JOHN de P. DOUW, ESQ.  
Of Counsel

HON. LOUIS J. LEFKOWITZ,  
Attorney General, State of New York  
World Trade Center  
New York, New York

Attorney for State of New York

THOMAS R. McLOUGHLIN, ESQ.  
Assistant Attorney General  
Of Counsel

A-59

---

**United States District Court**

Southern District of New York

---

71 Civ. 4315 (IBC) OPINION

TRINITY EPISCOPAL SCHOOL CORPORATION and  
TRINITY HOUSING COMPANY, INC.,

*Plaintiffs.*

vs.

GEORGE ROMNEY, Secretary of the Department of Housing  
and Urban Development, et al.,

*Defendants.*

vs.

STRYCKER'S BAY NEIGHBORHOOD COUNCIL, INC.

*Intervening Defendant.*

vs.

ROLAND H. KARLEN, ALVIN C. HUDGINS and  
CONTINUE,

*Intervening Plaintiffs.*

---

**OPINION OF DISTRICT JUDGE IRVING BEN  
COOPER**

---

A-60

#

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

TRINITY EPISCOPAL SCHOOL CORPORATION  
and TRINITY HOUSING COMPANY, INC., :

Plaintiffs, :

-v-

GEORGE ROMNEY, Secretary of the Department of Housing and Urban Development,  
et al., :

Defendants, :

71 Civ. 4315

-v-

STRYCKER'S BAY NEIGHBORHOOD  
COUNCIL, INC., :

(IBC)

OPINION

Intervening Defendant, :

-v-

ROLAND H. KARLEN, ALVIN C. HUDGINS  
and CONTINUE, :

Intervening Plaintiffs. :

-----X

APPEARANCES:

DEMOV MORRIS LEVIN & SHEIN, ESQS.  
40 West 57th Street  
New York, New York 10019

Attorneys for Plaintiffs

EUGENE J. MORRIS, ESQ.  
MARTIN STUART BAUER, ESQ.  
Of Counsel

HON. PAUL J. CURRAN  
United States Attorney for the  
Southern District of New York  
United States District Courthouse  
New York, New York 10007

Attorney for Defendants

*A-61*

DAVID P. LAND, ESQ.  
Assistant United States Attorney  
Of Counsel

HON. ADRIAN P. BURKE  
Corporation Counsel for the  
City of New York  
Municipal Building  
New York, New York 10007

Attorney for City of New York

HADLEY W. GOLD, ESQ.  
ROBERT F. LINER, ESQ.  
Assistant Corporation Counsels  
Of Counsel

MARTTIE L. THOMPSON, ESQ.  
Community Action for Legal Services, Inc.  
335 Broadway  
New York, New York 10013

Attorney for Intervening Defendant

JOHN de P. DOUW, ESQ.  
Of Counsel

HON. LOUIS J. LEFKOWITZ,  
Attorney General, State of New York  
World Trade Center  
New York, New York

Attorney for State of New York

THOMAS R. McLOUGHLIN, ESQ.  
Assistant Attorney General  
Of Counsel

IRVING BEN COOPER, D. J.

## INTRODUCTION

This is a case directly affecting the future of a 20 square block community and its more than 35,000 current and former residents. The area is the West Side Urban Renewal Area ("Area") in Manhattan, New York City, north between 87th and 97th Streets, west between Central Park West and Amsterdam Avenue. The West Side Urban Renewal Plan ("Plan" or "Final Plan") governs housing construction in the Area and was intended to bring about the rehabilitation and renewal of the Area; certain changes in the Plan would permit the construction of more low income housing and the admission of more low income occupants into existing buildings in the Area. The action before us is to enjoin these changes.<sup>2</sup>

---

1. Following the body of this opinion is Appendix A, a map of the Area (admitted into evidence as Ex. 14A) showing site location and use designations as of March 1966 (the 1966 tenant map admitted into evidence).
2. Plaintiffs Trinity Episcopal School Corporation and Trinity Housing Company, Inc. ("Trinity"), occupant of Site 24 within the Area, instituted this action on October 4, 1971, against the named defendants except Strykers Bay Neighborhood Council ("Strykers Bay"). Answers were filed by the City of New York ("City") and by the United States Attorney on behalf of the Department of Housing and Urban Development ("HUD")

and plaintiffs seek an order directing that future development proceed in a manner consistent with the Plan.

Plaintiffs are a private school within the Area and a group of middle income residents, primarily brownstone home owners; they claim that these changes would violate the Plan upon which they relied in choosing their homes, and, further, that such changes would cause the Area to deteriorate and become a ghetto. Defendants are the United States Government, the State of New York, the City of New York, and a community group of Area residents; their position is that these changes are necessary to provide sufficient housing to former Area residents who were displaced by the impact of urban renewal and who therefore have

---

Footnote 2 cont'd

and by the State of New York. ("State"). Thereafter, on April 13, 1972, Strykers Bay, a public interest group of residents and community organizations from the Area, joined as intervenor-defendant. On July 18, 1973, Roland N. Karlen and Alvin C. Hudgins, residents of the Area, and CONTINUE (Committee of Neighbors To Insure a Normal Urban Environment), another community group representing Area residents, moved to join as intervenor-plaintiffs. Their motion was granted on April 22, 1974 during trial.

a right of return to the site of their homes. Defendants further contend that the proposed changes would not adversely affect the Area.<sup>3</sup>

The jurisdiction of this Court is invoked under the Fifth and Fourteenth Amendments of the United States Constitution and under 28 U.S.C. §§1331, 1343 and 2201.

It has been clear from the outset that the parties to this controversy represent not only themselves but also the interests of thousands of citizens from divergent economic and racial backgrounds with inevitably conflicting needs and demands. In large measure our decision herein is our effort to find a just resolution of these conflicts.

---

3. Plaintiffs ask, in substance, that this Court (1) enjoin the construction of public housing on Sites 4 and 30 within the Area and reinstate their use designation as middle income housing; (2) direct that squatters (defined hereinafter) be removed from the Area; and (3) direct that new middle income buildings observe a housing ratio of 70% middle income to 30% low income, claimed to be a provision of the Plan.

ISSUES

The four issues agreed to by counsel at trial<sup>4</sup> (Tr. 48-52) are as follows:

(1) Whether there has been a breach of contract between Trinity, as sponsor of Site 24, and the City by reason of changes in the Area after execution of their contract and the manner in which the City has proceeded with execution of the Plan;<sup>5</sup>

(2) Whether the City was required to secure the written consent of plaintiffs Karlen and Hudgins as residents of the Pilot Project Area and based upon their contracts with the City to any proposed change in the Plan and particularly to the conversion of Site 30 from middle income to public housing;

---

4. Plaintiffs made a post-trial motion for counsel fees regardless of the outcome of this action. We will deal therewith at a later time.
5. A site sponsor is any person, group of persons or corporation who desires to build, manage or own a particular site within the Area, after entering into a contract with the City regarding that site.

(3) Whether construction of a public housing project on Site 30 would cause the Area to "tip" within the meaning of Otero v. New York City Housing Authority, 484 F.2d 1122 (2d Cir. 1973) ("Otero");

(4) Whether the Department of Housing and Urban Development ("HUD") has complied with the National Environmental Protection Act ("NEPA"), 42 U.S.C. §§4321-4347, regarding its study approving construction of the public housing project on Site 30.

Finally, plaintiffs raised in their post-trial memoranda an additional issue as to whether the approval by the City of the conversion of Sites 4 and 30 from middle income to public housing was in compliance with the statutory procedures.

A motion for a preliminary injunction was made on July 18, 1973; on September 19, 1973, it was referred to this Court for an evidentiary hearing. During the course of the hearing the motion for a preliminary injunction was withdrawn and the hearing converted to full trial on the merits. Trial proceeded on that basis with a long interruption from October

11, 1973 to April 22, 1974 devoted to a series of conferences looking to a settlement embracing a formula acceptable to all parties. There were periods of great expectation accompanied sometimes by sudden, hopeful ascents only to be followed ultimately by a sharp decline clearly pointing to a trial as the only course for the resolution of a perplexing situation fraught with perilous overtones. After 30 full trial days, the trial was concluded on May 20, 1974. Final supplemental post-trial memoranda were received on July 19, 1974.

#### I. HISTORY OF THE PLAN

Underlying the allegations of the parties is a conflicting understanding of the Plan, its purpose, and the scope of its commitments. We therefore undertake to set forth in considerable detail the history of the Plan's development and execution.

A. Background

Under the National Housing Act of 1949, 1949 U.S. Code Cong. & Admin. News 408, urban renewal was characterized predominantly by slum clearance programs. These involved the total demolition and clearance of badly deteriorated target areas, frequently resulting in massive relocation of hundreds of families to substandard housing elsewhere in New York City. Entirely new communities were then built on the cleared sites in accordance with the predetermined urban renewal plan.

Growing national dissatisfaction with slum clearance led to changes in the concept of urban renewal and/<sup>was</sup> reflected in the federal legislation. The provisions of the National Housing Act were amended in 1954 to expand the scope of urban renewal to include, for the first time, those areas which had degenerated but had not yet fully deteriorated. The 1954 amendments provided for redevelopment of these areas on the basis of conservation and rehabilitation of sound properties, and demolition and new construction only of those properties which had fully deteriorated.

The legislation also provided special funds for "demonstration studies" aimed at developing techniques needed in this new approach. In 1956 the City applied for, and received, federal grant funds for a demonstration study of the 20 square blocks which eventually became the West Side Urban Renewal Area.

The study was organized to determine whether realistic and meaningful proposals for renewal of the Area could be developed. James Felt, Chairman of the City Planning Commission, conducted this study (Ex. A) and published it in April, 1958. He concluded that renewal, rather than demolition, was "desirable, practicable and economically feasible." (Ex. A, p.4). Moreover, Commissioner Felt found that the Area, though deteriorating, had a number of residual strengths. Its proximity to public transportation and to Central and Riverside Parks as well as to many cultural and business centers had always made it a desirable residential area. In addition, much good housing stock remained, particularly along Central Park West and the numerous brownstones on the side streets.

The study also determined that the Area was maintaining a more favorable racial and economic level than was commonly achieved at the time. From 1950 to 1956, though the Area's Puerto Rican population increased almost eight-fold and the total white non-Puerto Rican population decreased by roughly a quarter, nonetheless white families constituted more than half of all families who moved in during the period. Moreover, the median income in the Area increased by more than one-third which indicates that the white families and individuals who moved into the Area must have had above-average incomes to compensate for the low incomes of the newly arriving black and Puerto Rican families. (Ex. A, pp. 10-11).

The study demonstrated that, though the Area was threatened by obsolescence, it had nevertheless retained the foundations of a formerly sound residential area, and that it was suited for rehabilitation rather than demolition and clearance. The objective of the renewal program envisaged by the study was not to create a new community but rather to preserve and improve the existing community so as to continue to accommodate the varied needs of its population.<sup>6</sup>

---

6. As stated in the study: What are the yardsticks against

B. The Preliminary Plan

In accordance with the Felt study's recommendation that an agency be created to draft plans for the Area, the Urban Renewal Board ("Board") was appointed by Mayor Wagner and then designated as the agency responsible for carrying out renewal of the Area. On May 28, 1959, the Board submitted its Preliminary Plan for the Area. (Ex. 5). The Preliminary Plan recommended as a goal that approximately 7,400 dwelling units of new private rental and cooperative housing be constructed. Approximately one-third of these units would be in the moderate rental range, requiring some degree of tax abatement; the remaining two-thirds would be fully tax-paying. One site, Site 29, would be designated for low income public housing, accommodating 400 units, but the Plan stated that the feasibility of including some additional units in rehabilitated structures would be explored. (Ex. 5, pp. 6, 19-20).

---

Footnote 6 cont'd

which a successful renewal plan should be measured? A reduction of the abnormal population turnover and elimination of the excessive overcrowding which contribute so greatly to the Area's decline. Maintenance of the economic and ethnic integration which is part of its tradition, is in accord with accepted City policy, and which will take into account the needs of its present population. (Ex. A, p. 12).

The City Planning Commission ("Commission")  
conducted hearings regarding approval of the Preliminary  
Plan on June 29, 1959. (Ex. 6). The community expressed  
substantial criticism concerning the Preliminary Plan's  
failure to provide a higher proportion of public and tax-  
abated housing to meet the needs of low and middle income  
families in the Area. The Preliminary Plan was neverthe-  
less approved by the Commission, but it recommended that  
the number of low rent units be increased to 800, by pro-  
viding for 200 additional public housing units and approxi-  
mately 200 low rent units in rehabilitated buildings. The  
Commission also recommended an increase in the number of tax-  
abated, or middle income, housing from 2400 to 3600 units.  
(Ex. 6, pp. 9-10).

After the Commission's approval, more public hear-  
ings were held by the Board of Estimate on September 17 and  
October 22, 1959. In its resolution of October 22, 1959  
(Ex. 7), the Board of Estimate increased once again the number  
of low and middle income units in the Preliminary Plan. In  
addition, proposed modifications of the Preliminary Plan were  
introduced which reflected the City's concern that there be

an effective relocation process as well as sufficient housing to accommodate dislocated Area residents at all income levels. Among those modifications were the following:

1. That the Urban Renewal Board make the necessary study of the people now residing in the redevelopment and rehabilitation areas, or as near that percentage as possible, and based on those findings, provide an increased number of middle-income and low-rent units within the project area more in line with the needs of the people in these categories and advise the Board of Estimate, two months before submitting a final plan, as to the location and quantity of required middle-income and low-rent units to be provided to house all the people in these categories.
2. That the minimum goals for low-rent shall be 1,000 units and the minimum goals for middle-income shall be 4,200 units.
3. That the project be developed at densities which will maintain, in general, the present overall population density.
4. That the construction of new buildings and the rehabilitation of existing buildings be so planned that, after a minimum initial dislocation of families, new buildings will be erected before dislocating further families; and those in the area next scheduled for demolition or rehabilitation will be given the opportunity to move into the newly-completed buildings.
5. That people be permitted to study the relocation plan and site priority machinery and have the opportunity to make recommendations to the Urban Renewal Board before the final plan is formally submitted to the Board of Estimate for adoption. (Ex.7)

The Board of Estimate resolution made clear that the number of low and middle rent units was to be based upon the needs of Area residents as determined by a study of their income levels. Moreover, the proposal of 1,000 low rent units was a "minimum goal" and not a final determination of the number of units to be included in the Final Plan.

#### C. The Final Plan

The Final Plan was approved by the City Planning Commission on May 29, 1962 (Ex. 8). It proposed 1,000 units of public housing, including 200 units in rehabilitated buildings. The number of middle income units was increased to 4,200 of which 15% (630 units) were to be available at rents comparable to those in public housing under the new "skewed rental" program.<sup>7</sup> Thus within the Area there was to be a total of 1,630 low rent units. In addition, 607 low rent units were to be made available outside the Area, but within

---

7. This is a procedure whereby rents in a particular building are arbitrarily varied so that some are for higher income and some are for lower income families, the overall average being fixed at the level required to operate the building economically.

its immediate vicinity, including 496 at three perimeter sites: Douglas Houses Addition, Amsterdam Avenue and West 125th Street, and the site of Public School 93 at West 93rd Street and Amsterdam Avenue. The Plan also estimated that an additional 572 low rent units would be made available through the normal turnover in "existing public housing projects in nearby areas." Most significantly, however, the Commission report made plain that the number of low rent units then provided for by the Plan was not an irrevocable determination but rather the Commission's judgment at that time as to the appropriate number of housing units which would achieve the Plan's desired goals. As stated therein:

There is no method by which we can predict the exact proportions in which to allocate the number of dwelling units at each rental level in order to achieve the broad objective of the Urban Renewal Plan. It is, however, our judgment, as well as that of the several City-wide civic organizations who appeared at the hearing, that the proportion submitted by the Housing and Redevelopment Board is satisfactory and will achieve the desired goals. (Ex. 8, p. 11).

The Final Plan, as approved by the Commission, provided that the Area be redeveloped in three stages: Stage I, from 93rd to 97th Streets, Stage II, 90th to 93rd Streets, and Stage III, 87th to 90th Streets. The purpose of "staging" was to minimize the disruptive effect of relocation, by enabling residents to move from one stage to another and return upon completion of their stage. (Tr. 226).

The Final Plan, as approved by the Commission, also incorporated the Pilot Rehabilitation Project, comprising 81 brownstones on 94th and 95th Streets between Columbus Avenue and Central Park West, which had already been approved by the Commission and the Board of Estimate in 1960. The Pilot Project was used as a rehabilitation demonstration area "to establish more refined standards and to explore feasible methods of rehabilitation." (Ex. 8, p.3).

Considerable community objection remained as to the number of low rent units to be provided. Suggestions for additional units varied from 2,000 units to 4,000 units with 2,500 being most frequently recommended. (Ex. 8, p.9). Consequently, on the eve of the Board of Estimate hearing, scheduled for June 22, 1962, Mayor Wagner called a meeting

to decide whether to raise the Plan's commitment to low rent units to 2,500. The meeting was attended by, among others, Milton A. Mollen, Chairman of the Housing and Re-development Board, Walter Fried, a member of the Board, Commissioner Felt and Herman Badillo, Deputy Commissioner of Relocation.

Mayor Wagner thereafter announced in a press release (Ex. H) dated June 21, 1952, that "[n]ew low-cost housing units within the twenty-block urban renewal area are to be increased from 1,000 to 2,500 under the terms of the Mayor's directive." The release further provided that in addition to the 1,000 units of new public housing construction, 1,010 low rent units within middle income buildings would be made available instead of the 630 originally approved by the City Planning Commission. This greater figure was to be achieved by increasing the number of middle income units and by increasing the percentage of skewed rental units within middle income projects from 15% to 20% and further, 280 units were to be provided by the Housing Authority in rehabilitated brownstones; finally, 210 additional units of public housing were to be built on the abandoned P.S. 93 site, which is adjacent to the Area. In addition to these 2,500 units within

the Area and at the P.S. 93 perimeter site, Area relocatees would be given priority for apartments at two other perimeter sites: the Douglas Houses Extension at 100th Street and Amsterdam Avenue, and a new public housing project at 830 Amsterdam Avenue. It was estimated that this would provide an additional 285 low rent units.

#### D. The 2500 Policy

One of the critical factual issues in this litigation is the significance of the figure of 2,500 units. Plaintiffs claim, in substance, that this total was a maximum not to be exceeded, and that it included 517 units at three perimeter projects: De Hostos (built on the site of P.S. 93), 830 Amsterdam Avenue, and Douglas Addition. Defendants contend, on the other hand, that 2,500 was intended as a minimum commitment, and that only in that sense are perimeter projects other than De Hostos included.

We will discuss this issue at length later in this opinion. I note here, however, that the source of the 2,500 figure appears to be the Mayor's press release. That release, which included only the P.S. 93 site in its calculation of

the 2,500 units, made no mention of whether the figure was a minimum or a maximum. Mr. Fried, however, testified that Mr. (now Congressman) Badillo regarded the 2,500 commitment as necessarily a minimum calculation and that Mayor Wagner accepted that position. (Tr. 838, 923).<sup>8</sup> In materials presented to the Board of Estimate (Ex. D) following the meeting with Mayor Wagner, Congressman Badillo stated that the 2,500 units were "to be provided both within the site [Area] and in the area adjacent to and surrounding the site [Area]," and that additional low rent units would be provided "by building additions to existing projects, rehabilitating brownstones, and as a result of turnover in existing low-rent public housing in the vicinity." (Ex. D, p.7). Moreover, Congressman Badillo testified at trial that the Mayor's announcement of 2,500 low rent apartments was intended to be a minimum. (Tr. 3836).

---

8. Mr. Fried, who is currently Vice-Chairman of the New York City Housing Authority, also testified that the press release was inaccurate and that Mayor Wagner intended that all three perimeter sites be included within the 2,500 commitment. (Tr. 838).

It should be noted that on several occasions after 1962, the City reaffirmed its policy of providing 2,500 low income units. For instance, on December 9, 1966, Jason R. Nathan, Chairman of the Housing and Redevelopment Board, stated before the Board of Estimate that his agency would provide a minimum of 2,559 low rent units in the redevelopment of the Area. (Ex. 2). Thereafter, on October 6, 1967, in an open letter sent to Area residents, the Housing and Development Administration ("HDA")<sup>9</sup> reaffirmed the City's policy of creating 2,500 low rent units. (Ex. 3). Finally, on October 25, 1967, Mr. Nathan, appearing before the Board of Estimate on the proposed disposition of Site 6, again reaffirmed the City's intention "to build 2,500 units of low income housing in the Upper West Side," (Ex. 4, p.1) and stated that the percentage of low income units in certain

---

9. HDA is the successor City agency to the Housing and Redevelopment Board by virtue of the New York City Charter (Local Law #58, adopted July 28, 1967) and Executive Order of the Mayor #56 dated November 28, 1967 which provides December 1, 1967 as the effective date of Local Law #58.

middle income buildings would be raised from 20% to 30%.

The Nathan statement concluded with the following:

The most important result is that housing for low income families will be in ample supply. There will be enough not only to meet the needs of the residents of the neighborhood who must be relocated, but to fulfill the total commitment of 2,500 apartments to which the city is pledged.  
(Ex. 4, p.3).

#### E. Execution of the Plan: 1962-1968

The Plan went into execution in January, 1963.

Construction went forward despite delays and administrative problems. By 1966 four public housing projects were ready for occupancy within the Area as well as the three perimeter projects (De Hostos, 830 Amsterdam, and Douglas Addition).  
(Ex. 5). As a result of the Plan's tangible achievements there was an increase in the investment of private capital. Among the numerous site sponsors and purchasers were plaintiff Trinity School, which invested over nine million dollars in Site 24 as a combination school and middle income housing project, and plaintiff intervenors Karlen and Hudgins who

invested \$148,000 and \$265,000 respectively in their brownstones in the Pilot Project Area. Plaintiffs contend that it was in this atmosphere of optimism and progress that they made their decisions to remain in or move into the Area.<sup>10</sup>

Between 1963 and 1966 the City amended the Plan four times, the first two carried forward proposals for public housing. The first amendment (1963) approved a plan for the acquisition and rehabilitation by the City Housing Authority of 36 brownstones for low income housing. (Ex. 11). The second (1964) provided for conversions of Site 36 from fully tax-paying housing to public housing and of Sites 12, 13 and 14 from fully tax paying to partially tax exempt housing at moderate rentals. (Ex. 15, 16). In approving these changes, the City Planning Commission reemphasized its previous statement

---

10. Other brownstone residents who testified in behalf of plaintiffs made similar claims. They are represented in this action by CONTINUE whose active membership is made up primarily of middle income brownstone owners in the Area; they are opposed to further changes in the Plan contending it will cause the Area to deteriorate.

in connection with the adoption of the Final Plan:

There is no method by which we can predict the exact proportions in which to allocate the number of dwelling units at each rental level in order to achieve the broad objective of the Urban Renewal Plan. (Ex. 15, p.4).

The third amendment (1965) involved a change in the mode of rehabilitation of Site 23. (Ex. 17, 18). The fourth amendment (1966) provided for conversion of Sites 5 and 10 from fully tax-paying to partially tax-exempt housing and reconversion of Site 36 from public housing also to partially tax exempt housing. (Ex. 19, 20).

The initial conversion of Site 36 to public housing by the second amendment brought the number of public projects planned for the Area to a total of five. The fourth amendment, however, reduced that figure to four, the number originally proposed in Mayor Wagner's 1962 press release. (Ex. H). All of these amendments to the Plan were enacted before any of plaintiffs entered into contracts with the City regarding sponsorship of their sites.

After the four public housing sites were completed in 1965, the next cycle of buildings readied for occupancy were four Mitchell-Lama cooperatives (Sites 8, 11, 16 and 17), using the skewed rental method for low-rent units, and a Mitchell-Lama rental building<sup>11</sup> (Site 14), using the State Capital Grant Assistance Program<sup>12</sup> for low rent units. (Ex. 5).

By the time these first five Mitchell-Lama developments opened in March-May, 1967, a sharp increase in construction costs threatened the City's ability to meet its commitments for adequate low and moderate income housing.

---

11. Mitchell-Lama housing is the generic or common term used for moderate and middle income housing developed pursuant to Article II of the Private Housing Finance Law of the State of New York and assisted by state or municipal mortgage loans and real estate tax exemption.
12. This is a subsidy program under which individual apartments are rented at market rental by the local housing authority and then subleased to a low income family at public housing rental with the difference being subsidized by the State.

Between 1964 and 1967, because of construction costs and increasing interest rates, Mitchell-Lama rents more than doubled. The increase was so drastic, in fact, that for a while the program was suspended. (Tr. 2657-2660). The increase threatened not only programs providing moderate income units but skewed rental as a means of providing units at rents equivalent to public housing. There was a limit to how much differential between the skewed rental units and the other units would be feasible. Even before the drastic increase of costs in Mitchell-Lama developments began, the skewed rental units rented at levels higher than public housing.

The City's commitment to low and moderate income housing was in jeopardy; this can be seen in Mr. Nathan's statement of December 9, 1966 before the Board of Estimate (Ex. 2) in support of the fourth amendment to the Plan wherein he acknowledged that the City's "commitment" to 2,500 low rent units in the Area had been only a hope, principally because the only program available, other than public housing construction, was the skewed rental program. Mr. Nathan then

announced that in addition to 400 skewed rental units in cooperative projects, 400 units would be provided by the Housing Authority under the leased public housing program,<sup>13</sup> and a minimum of 306 units under the State Capital Assistance Program. (Ex. 2, p. 2).

Subsequent difficulties, however, threatened a portion of the leased public housing promised within Mitchell-Lama projects. Accordingly, on October 25, 1967, Mr. Nathan again appeared before the Board of Estimate (Ex. 4) and advised that, in order to fulfill the 2,500 policy, the percentage of all public housing leasing would be raised from 20% to 30%, and that the percentage of state capital grant units on Site 6 would similarly be increased from 20% to 30%. (Ex. 4, pp. 1-2).

---

13. This program operates in the same manner as the State Capital Grant Program but is subsidized instead under the federal public housing program.

F. Execution of the Plan: 1968-1973

By 1968 construction of low income housing had come to a standstill. It had become clear that the Mitchell-Lama program was no longer an economically feasible means of providing moderate income housing. This dilemma forced the City to find a new source of funds for middle income housing. The solution, albeit imperfect, was the Section 236 housing subsidy which became available from the federal government in 1968.<sup>14</sup> Using this subsidy in combination with Mitchell-Lama financing, rents could be cut almost in half. (Tr.3167).

The first projects built in the Area using the combination of subsidy programs, Mitchell-Lama and Section 236, were Columbus Manor and Westwood House (Sites 21 and 22), both of which opened in June, 1971. The third was Leader House (Site 20), which opened in August, 1972. All used the leased public housing program to make available 30% of their units for low income households.

---

14. This is a program whereby the interest rate on a federal or state financed mortgage is subsidized down to 1% in order to bring the rent of an individual apartment down to a level that is 25% of the tenant's income. See 12 U.S.C. §1715 z-1 (c).

Although the Section 236 program was intended to provide moderate or middle income housing (Ex. 54) and not to supplement public housing, the program was restricted to persons with incomes no greater than 135% of the limit for public housing eligibility.<sup>15</sup> The program thus worked to

-----

15. There is, however, an alternative "exception limit" according to which 20% of the total amount of interest reduction payments can be made for families whose incomes exceed this 135% formula but do not exceed the income limitations set forth at 12 U.S.C. §1715 (1)(d)(3). The following table, submitted by the City (by agreement of the parties) after trial at the direction of the Court (Tr. 3828-3829), sets forth the respective Section 236 public housing and housing authority income limits as of May 23, 1974 (see letter of Robert Liner, Esq. to the Court dated June 3, 1974):

Income and Rent Limits in  
New York City  
under Subsidized Federal Programs

ADJUSTED ANNUAL INCOME LIMITS

<u>No. of Persons</u>	<u>236 Regular</u>	<u>236 Exception</u>	<u>Rent Supplement</u>	<u>Housing Authority Leasing</u>
1	\$ 8,235	\$ 9,250	\$ 6,100	\$ 6,300
2	10,530	11,250	7,800	8,160
3	11,340	13,250	8,400	9,360
4	12,150	13,250	9,000	9,360
5	12,690	15,200	9,400	10,200
6	13,230	15,200	9,800	10,200
7	13,770	17,200	10,200	11,040
8	14,310	17,200	10,600	11,040
9	14,580	17,200	10,800	11,520
10 or more	14,850	17,200	11,000	11,520

exclude families whose incomes, though beyond the Section 236 limits, were such that they could not afford newly constructed Mitchell-Lamas. (Tr. 3166, 3758-3759). At the same time, because of the relatively low rentals in Section 236 buildings and the scarcity of low income housing, the Department of Social Services began to place welfare-assisted families in middle income units.<sup>16</sup> (Tr. 3194). As a result of this policy,

---

16. Pursuant to the Court's direction (Tr. 3828-29), the City certified the following information regarding the number of welfare assisted families at the three projects, including both leased public housing as well as the program initiated by the Department of Social Services (see letter of Madley W. Gold, Esq. to the Court, dated May 28, 1974):  
A. Total Welfare assisted families (various programs) in Leader House, excluding elderly and disabled: 62. B. Total Welfare assisted families (various programs) in Columbus Manor, excluding elderly and disabled: 50. C. Total Welfare assisted families (various programs) in Westwood House, excluding elderly and disabled: 27.

and in order to meet the demands of Area relocatees, Leader House, Columbus Manor and Westwood House were occupied by low income households substantially in excess of their 30% allocation. (Tr. 1430, 2002, 3194-3195).<sup>17</sup>

As of January, 1969, 1,230 public housing units had been completed. In addition, about 20% of the 1,769 middle completed/income units were inhabited by low income households; this made for a total of 1,584 completed low rent units. (Ex. 65). With Section 236 subsidies in short supply and the only buildings under construction being middle income, there was a growing community sense that the commitment to provide adequate low income housing would not be met. Eventually the City converted Sites 4 and 30 from middle income to low income housing; it was this decision that precipitated the litigation before us.

---

17. Defendants concede that low income families occupy up to 50% of the total units in these buildings. (Tr. 3320-3322). Plaintiffs contend, however, that because of this policy as well as the similarity of Section 236 income limits to public housing limits, almost the full occupancy of these buildings is low income housing.

Robert Hazen, then Commissioner of Development at HDA, testified at trial as follows regarding the circumstances leading to the conversion of Sites 4 and 30 to public housing:

The events were that the subsidies for the moderate income housing, so-called Section 236, were, as I have indicated, in short supply and the long term feasibility, looking ahead, was uncertain at best. There was also a feeling on the part of many community representatives with whom the city met that the project had taken off economically in the sense that it was becoming more and more a fashionable middle to upper middle income neighborhood and that perhaps there was a danger that the low rent commitments would either not be met through delay or not be met through the inability of the subsidy -- that particular subsidy program to work. (Tr. 3173).

However, despite the shortage of Section 236 subsidies, a direct public housing construction program was available. Accordingly, both community and government leaders came to support additional public housing constructions as the logical means of carrying out the City's policy. (Tr. 3173-3174).

At the same time (Spring, 1970), squatters occupied several buildings in the Area awaiting demolition, including that on Site 30. Their arrival, while not a new phenomenon in the City's urban renewal experience, exacerbated tensions between those who advocated an increase in the number of low

rent units in the Area and those who felt that such an increase would be contrary to the letter and spirit of the Plan and would adversely affect the character of the Area. While most squatters were not from the Area, and to that extent were not Area relocatees entitled to "Area priority" in the allocation of low rent units,<sup>18</sup> nonetheless their presence pointed up the general need for low-rent housing and inevitably increased both political and community pressure for the creation of more low income units within the Area.

---

18. HDA has stated that its policy regarding the **squatters** is that it will provide alternate temporary quarters in the area so long as they are available and ultimately consider the squatters for any remaining units "not required to meet the needs of those with higher relocation priorities." (Ex. 26, p.5). We take this to mean that those squatters who were not originally Area residents will not be considered among the relocatees to whom the City is committed to provide housing within the Area. Accordingly, the number of low income units within the Area will not be increased to provide housing to those squatters who were not Area residents.

Rather than evict the squatters, as plaintiffs contend should have been done, the City entered into rental agreements with them permitting them to remain until demolition was ready to proceed. The City has stated that according to HDA records there are currently 274 squatter families residing within the Area.<sup>19</sup>

In response to these pressures, the Housing Authority proposed conversion of Site 4 from fully tax-paying to public housing (270 units). The conversion was approved by the City Planning Commission on August 12, 1970 (Ex. 24) and by the Board of Estimate on September 17, 1970 (Ex. 28). Currently, however, there are no available funds to construct Site 4.

Similar considerations, particularly the unavailability of subsidies for middle income housing and unmet relocation needs, led to the proposed conversion of Site 30 from middle income to public housing (160 units). The proposal was approved by the City Planning Commission on August 11, 1971 (Ex. 26) and by the Board of Estimate on November

---

19. See letter of Hadley W. Gold, Esq. to the Court, dated May 28, 1974.

11, 1971 (Ex. 27). The report of the Commission approving the conversion shows that while one community organization, presumably CONTINUE, argued that the proposal would upset the balance between low and middle income housing, the bulk of opposition was on the ground that construction of a new project would require demolition of existing buildings occupied by squatters. Several community organizations and two dissenting members of the Commission favored rehabilitation of the existing building for the benefit of the squatters residing therein. The Commission, however, in approving the conversion and rejecting equal preference for squatters, stated, in part:

All new housing in the West Side Urban Renewal Plan, including that proposed for site 30, was intended to provide relocation for on-site tenants displaced by the renewal activity. The original tenants on site 30, and thousands of original residents of the west side area, left their homes with the firm guarantee that they would have first priority in moving back into the new housing to be constructed. That guarantee still stands.

If the City is to honor its obligation to those families who accepted the painful necessity of relocation, it must not accord a higher relocation priority now to others who have since taken over apartments the original tenants left.

Failure by the City Planning Commission to approve the public housing project would leave the status of the renewal plan unchanged and site 30 would still be designated for middle-income housing. This would leave the status of the site in doubt and delay the building of greatly needed housing for the area. (Ex. 26, pp.4-5).

### G. Plans For Future Development

In October, 1973 the State of New York assumed responsibility for completion of the Plan. Lee Goodwin, New York State Commissioner of Housing and Community Renewal, testified:

After reviewing a number of proposals with the City and considering a number of options to put this money in other parts of the State, we concluded that the most desirable use of funds from both the City's and State's standpoint would be the completion of the West Side Urban project which had been in planning and execution for more than a decade. (Tr. 3784).

The State and City are proceeding with the development of Site Site 41 and/44. Thereafter, the State has agreed with the City to undertake the development of Sites 9, 32, 35 and 45/46 (constituting a single site). All of the proposed projects will be financed through the Mitchell-Lama and Section 236 programs, with 30% of the units designated for low income families under leased public housing. (Tr. 3792-3796).

## II. THE SIGNIFICANCE OF THE CITY'S LOW INCOME HOUSING POLICY

As we have discussed above, a critical issue here is the City's announced policy to provide 2,500 units of low income housing. A parallel issue, which we consider below, is the City's policy of maintaining a 70%:30% ratio of middle to low income units in middle income buildings in the Area. We find, on the basis of the history of the Plan from its initial promulgation until the present, that the 2,500 figure was intended neither as a fixed minimum nor as a maximum. Rather it was a political judgment on the part of City officials as to an appropriate number of units which would satisfy the housing needs of low income relocatees desirous of returning to the Area, while not compromising the Plan's overriding objective to create a racially and economically integrated community. No legal or binding commitment by the City was intended; the 2,500 figure was instead a statement of policy and intention. It was aimed at meeting the needs of low income relocatees to the maximum extent possible without endangering the private capital investment so necessary to economic integration. Both Roger Starr, Administrator of the Housing and Development Authority<sup>20</sup>

---

20. Mr. Starr was appointed HDA Administrator after his testimony in this litigation. His views do not necessarily represent those of HDA.

A-97

and Walter Fried, then Vice Chairman of the Housing and Redevelopment Board (the City agency which administered the Plan), testified that balancing of these two interests was the critical factor in determining the number of low rent units to be constructed in the Area. (Tr. 397, 444, 889). Moreover, contrary to plaintiffs' assertions, the right of relocation was itself a paramount Plan objective. Though the testimony on this point is conflicting (Tr. 397, 714, 3157), the documentary history of the Plan makes clear that the City was committed to provide sufficient Area housing to low income relocatees desirous of returning. This feature of the Plan has never changed.<sup>21</sup>

---

21. As late as 1969 when the Plan by all accounts was still being properly executed, HDA administrator Nathan included the following statement in his progress report:

The originally estimated completion date of the project was March, 1969. 1973 is now cited as the probable time of completion. The reasons for this delay are many. However, the problem of satisfactorily relocating the area's population in accord with the city's commitments is the primary cause of delay. Staging; attempting to temporarily on-site families so as not to necessitate their moving off the site while construction is in process; promising to provide satisfactory housing for all of those living in the area when the city took title who wanted to remain -- these are all aspects of the relocation process contributing to the delay.

It is also clear that the 2,500 figure was intended as an estimate which could be modified subject to changing needs and conditions. That estimate, which was itself the product of numerous revisions, represented an assessment of low income housing needs balanced against the objective of maintaining economic integration. The

---

Footnote 21 cont'd

While it is true that a delay of almost Four(4) years results in greatly increased construction costs and therefore higher rents, this cost must be measured against the social benefits resulting from disrupting the population as little as possible and providing new housing for those whose homes were torn down. (Ex. 65, p.3).

This statement was made before the advent of the squatters whose presence, plaintiffs contend, was the real reason for the conversion of Site 30. ✓

assessment of such needs must inevitably vary<sup>22</sup> and it has been established here that the economic conditions assumed at the inception of the Plan have themselves drastically changed. (Tr. 2660-2661). Accordingly, in order for

-----

22. At the conclusion of trial, the City (by agreement of the parties) certified the following information regarding the status of Area relocatees (see Mr. Gold's letter of May 28, 1974 to the Court):

West Side Urban Renewal Area  
Relocatees

- A. Relocatees in the West Side Urban Renewal Area on date of vesting of title in the City of New York 5,838
- B. Relocatees placed in housing in the West Side Urban Renewal Area to date 1,900 to 2,000
- C. Relocatees presently residing on temporary holding sites within the West Side Urban Renewal Area 114
- D. Relocatees presently residing off-site who have expressed an interest to return 728
- E. Relocatees listed on HDA fiscal list in addition to above (approximately) 2,500
- F. Relocatees, individuals and families, not locatable (approximately) 480

plaintiffs to establish that the City is now violating the Plan by increasing the number of low income units in the Area, they must show that such an increase would endanger the integration of the Area and therefore the underlying purpose of the Plan.

Closely related to the 2,500 policy is the issue of the City's allegedly binding commitment to a 70%:30% ratio of middle to low income housing in the Area. It is important to note that, unlike Otero, supra, we are not dealing here with regulations adopted by the City pursuant to law, but rather with political intentions. The HDA statement of October, 1967 (Ex. 4) declared that the percentage of State Capital Grant units on Site 6 and of all public housing in Mitchell-Lamas contracted for thereafter would be increased from 20% to 30%.<sup>23</sup> In January, 1973 an HDA memorandum reaffirming the City's "commitment" to the "70:30 policy" declared in pertinent part:

In 1971, after lengthy discussion in the West Side Community and due consideration of the needs and character of that community, HDA agreed, with the express approval of the Mayor's office, to a new policy concerning the

---

23. The 70%/30% ratio is included in Trinity's contract with the City as sponsor of a Mitchell-Lama on Site 24 (Ex. 14, Tr. 1035).

tenant mix in all buildings which have the benefit of interest reduction subsidies under Section 236 of the National Housing Act in the West Side Urban Renewal Area. The policy, which was first adopted by community Planning Board No. 7, calls for maintenance of a ratio of 70%:30% between moderate and low income families in 236 building. (For this purpose, moderate income refers to families and individuals meeting the income requirements of the Section 236 program, including the exception limits, if and when allowed by HUD.) (Ex. 54).

It is probable that the 70%:30% policy was intended to include all Section 236 Mitchell-Lamas, as well as those using leased public housing to fulfill their low income requirement and which were constructed after the October, 1967 statement. Indeed, the 1973 HDA memorandum declared that violations of the policy at Leader House (Columbus Manor and Westwood House) were to be corrected through ordinary turnover. However, consistent with our finding with respect to the alleged 2,500 commitment, we conclude that the 70%:30% ratio was never intended as an irrevocable commitment binding upon the City. Furthermore, to sustain their claim with respect to this issue plaintiffs must establish that failure to adhere to the 70%:30% policy would likewise threaten the integration of the Area and consequently the underlying purpose of the Plan. This plaintiffs failed to accomplish by proof clear and convincing.

## III. THE CITY'S CONTRACT WITH TRINITY

Two of the issues before us involve alleged breaches of contract by the City; the first of these is closely related to the City's policy of providing 2,500 low income units and a 70%:30% ratio of middle income to low income tenants in middle income buildings; the second (infra at IV) relates to the alleged breach by the City of its contract with Karlen and Hudgins, brownstone owners. Plaintiffs contend, with respect to the first issue, that the City breached its contract with Trinity by reason of "the general changes in the West Side area after the fourth revision of the West Side Urban Renewal Plan." (Tr. 48, 51). They claim, in substance, that City officials orally advised them that the Plan's principal objective was to create a racially and economically integrated Area, and that this objective could best be achieved by the inclusion in the Plan of 2,500 units of low income housing; that this method would permit the City to deal equitably with the relocatees and, at the same time, preserve a healthy economic balance in the Area. The 2,500 units figure became, in effect, a part of the various agreements made by the City with sponsors and with other persons making a commitment to the Area under the terms of the Plan. Plaintiffs argue

that any change by the City with regard to its 2,500 and 70%:30% policies, or in the Plan generally, including the conversion of Site 30 from middle to low income use, would constitute a breach by the City of its contract.

Trinity was represented by Elliot Lumbard, Esq. in dealing with the City as to Trinity's sponsorship of Site 24. Trinity claims that during the period in which it was considering sponsoring Site 24 (1963-1968), Judge Milton Mollen, then Chairman of the Housing and Redevelopment Board, and other City officials assured Mr. Lumbard that Trinity could rely on the Plan being executed as it was then formulated since it had the full support of the Mayor and governing officials. (Tr. 966-972). Mr. Lumbard testified that Trinity was concerned about the solidity of the Plan and the future of the Area. He stated that City officials had assured him that they shared his concern and to that end had allocated definite income uses for each of the Area sites, including Site 30. (Tr. 982-984). Although Mr. Lumbard met on several occasions with City officials, he placed the greatest emphasis on, and recalled with the greatest particularity, two meetings attended by Judge Mollen in 1963 and 1964. At the second meeting Judge Mollen expressed the City's interest in keeping Trinity in the Area as a site sponsor;

he made the alleged representations that Trinity could rely upon the Plan and referred to large charts showing the income designations for the various sites. (Tr. 1065).

Other area residents testified that similar representations were made to them. Specifically they alleged that Colonel William Hunter and Mr. Joseph Luria, who managed the City's Area office, represented to them as potential brownstone purchasers that the Plan called for a maximum of 2,500 low income units and that 30% of the units in middle income buildings would be allocated to low income families. (Tr. 1271, 1289, 1509, 1800, 1949, 1955). Plaintiffs maintain that these representations became implied and enforceable provisions of the City's contracts with respective purchasers of brownstones because they were indispensable in effecting the mutual concern of creating a balanced community.

However, the language of their respective contracts forecloses the claims of Trinity and brownstone purchasers. Section F of the 1966 Fourth Revision of the Plan (annexed to and incorporated into Trinity's contract with the City, Ex. 14) specifically authorizes the City to modify and amend the Plan at any time subject only to the consent of the purchaser or lessee of the particular parcel covered by the modification. Section F provides as follows:

\ To not object to Site 30

F. Changes in Approved Plan.

This Urban Renewal Plan may be modified at any time by the City of New York, provided that if modified after the disposition of any land in the project area such modification must be consented to in writing, by the purchaser or lessee or their successors in interest of the specific property covered by the modification. This shall not be construed to require the consent of the purchaser or lessee or their successors in interest of any other parcel in the project area.

The parol evidence rule provides that in order for a purported oral agreement to vary a written contract, the oral agreement must not modify or contradict express or implied provisions of the written instrument. Mitchell v. Lath, 247 N.Y. 377 (1928); Aratari v. Chrysler Corp., 316 N.Y.S. 2d 680 (App. Div. 1970). Accordingly, to the extent that the alleged oral representations to Mr. Lumbard are construed as a promise by the City that it would not modify the Plan, they amount to prior negotiations that are inconsistent with an express provision of a written contract and therefore barred by the parol evidence rule.

The underlying concept of urban renewal demands that the Plan could be modified at any time. Walter Fried and Roger Starr both testified that every urban renewal plan is subject to change and required flexibility for change in order to accommodate changing social, economic and racial conditions. (Tr. 398-400, 627-628, 935). Indeed, though

Mr. Lumbard was unaware of it, the Plan, by the time Trinity entered into its contract with the City, had already undergone four revisions, including the changes in the income designation of Site 36. Thus the alleged representation that the Plan would not be modified is inconsistent not only with the express provision authorizing modification but also with the history of the Plan and the underlying concept of urban renewal.

Plaintiffs introduced into evidence two contracts by purchasers of brownstones from the City of New York (Ex. 35a and Ex. 2 annexed to plaintiffs' motion for a preliminary injunction). Section 110 of the contracts states that all prior understandings and agreements are merged into the contract, and that neither party relies upon any statement or representation not embodied in the Contract. Section 110 provides as follows:

§110.

It is understood and agreed that all understandings and agreements heretofore had between the parties are merged into this contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this contract, made by the other. The Purchaser has inspected the building standing on said premises and is thoroughly acquainted with its condition.

The existence of this merger clause precludes the use of parol evidence to establish a breach of contract. Jones Memorial Trust v. TSAI Investment Services, 367 F.Supp. 499 (S.D.N.Y. 1973); Hamilton Life Insurance Co. of New York v. Republic National Life Insurance Co., 291 F.Supp. 236 (S.D.N.Y. 1968); Fogelson v. Rackfay Construction Co., 300 N.Y. 334, 340 (1950).

Even in the absence of such a merger clause, the parol evidence rule would bar use of the alleged representations to establish a breach of contract and for the same reasons stated above regarding Trinity School. Though the Plan was not actually annexed to the two contracts admitted into evidence, it is clear that they are subject to its provisions. Section 405 of both contracts states this explicitly:

"405. Wherever the provisions of the West Side Urban Renewal Plan, as amended through the date of execution of this Agreement, are inconsistent with the provisions of the Pilot Plan, annexed thereto, the provisions of the West Side Urban Renewal Plan, as amended as aforesaid shall govern."

Accordingly, Section F of the Plan, set forth above, governs the contracts and therefore excludes reliance upon alleged prior representations as implying a contemporaneous agreement which could not be modified.

A-108

Finally, there is doubt that the alleged representations were ever made in the form recalled and if so whether they were misconstrued and improperly relied upon. Colonel Hunter testified he never made any statements to anyone on any occasion that there would be 2,500 units of low income housing or that there would be an economic mix of 70% middle and 30% low income residents. (Tr. 3604-05). Plaintiffs' counsel stipulated that Mr. Luria if called would give the same testimony. Judge Mollen testified that he would not have undertaken to represent that he could bind the City regarding the Plan or any of its provisions because, as was demonstrated by its history, the Plan was subject to amendment. (Tr. 3686). Moreover, he gave testimony that Messrs. Hunter and Luria were never authorized to make binding commitments upon the City regarding the Plan. (Tr. 3687). This is consistent with Exhibit 13, a brochure published by the Housing and Redevelopment Board entitled "Rehabilitation in the West Side Urban Renewal Area" which states, at page ii, that the function of its representatives at the site office was to "process applications for purchase and sponsorship of brownstones and furnish guidance and advice with respect to architectural and financial requirements and assistance." Thus, not only did Hunter and Luria lack authority to make such representations, but HRB explicitly limited the scope of their authority. The law is clear that

that acts or statements by City employees beyond the scope of their authority are not binding upon the City. United States v. City of New York, 131 F.2d 909 (2d Cir. 1942); Dalton v. Van Dien, 339 N.Y.S. 2d 378 (Sup. Ct. 1972); Lindlots Realty Co. v. Suffolk County, 278 N.Y. 45 (1938); 53-04 97th Place Corp. v. City of New York, 282 N.Y.S. 519 (Mun. Ct. 1935).

As we see it, plaintiffs have failed to show that the City or its employees ever made a commitment to a fixed and immutable number or percentage of low income units. Indeed, such a commitment would have been inconsistent with both the history and purpose of the Plan. As we have found, the 2,500 figure was never intended as a minimum or maximum number of low income units but rather as an estimate of the number of units needed to satisfy the demand for relocatee housing consistent with the objective of creating an economically and racially integrated community. That estimate would inevitably change, as it had in the past, to meet the shifting needs and demands of the community so long as such change did not threaten the Plan's objective. (Tr. 3158).

#### IV. THE CITY'S CONTRACT WITH KARLEN AND HUDGINS

Plaintiff-intervenors Karlen and Hudgins are, as discussed above, brownstone owners residing within the Pilot Project Area. We now consider whether the City was required to obtain written consent from them when it converted Sites 4 and 30 from middle to low income housing. Defendants concede that no such consent was sought or obtained.

They contend that this issue is governed by Section R of the "Final Plan for the Rehabilitation Demonstration Pilot Project" ("Pilot Project Plan") which provides:

R. Changes in Approved Plan

This Final Plan may be modified at any time by the City of New York, provided that if any such modification affects any real property previously disposed of by the City in the Pilot Project area, written consent to such modification must be obtained from the purchaser or lessee of such real property.

Plaintiffs claim that, pursuant to this provision, any change in the Urban Renewal Plan relating to any site in the Area (including but not limited to the Pilot Project area) which affects property within the Pilot Project Area must be consented to in writing by the owner or lessee of such property. Inasmuch as Karlen and Hudgins are affected

by the conversion of Sites 4 and 30 to low income housing, though these sites are outside the Pilot Project Area, the City, they claim, was obliged to secure their consent to the conversion.

Plaintiffs' claim must be denied. The Pilot Project Plan was developed and intended as a forerunner to the Urban Renewal Plan ("Plan") as a means of developing refined standards and techniques for the execution of the Plan. When it was promulgated in 1962 the Plan became the definitive program for the development of the entire Area, and any inconsistencies with the Pilot Project Plan were to be resolved according to the terms of the Plan. To that end, Section 405 of both the Karlen and Hudgins contracts provides:

405. Wherever the provisions of the West Side Urban Renewal Plan, as amended through the date of execution of this Agreement, are inconsistent with the provisions of the Pilot Plan, annexed thereto, the provisions of the West Side Urban Renewal Plan, as amended as aforesaid shall govern.

Section F of the Plan provides:

F. Changes in Approved Plan.

This Urban Renewal Plan may be modified at any time by the City of New York, provided that if modified after the disposition of any land in the project area such modification must be consented to in writing, by the purchaser or lessee, or their successors

in interest of the specific property covered by the modification. This shall not be construed to require the consent of the purchaser or lessee or their successors in interest of any other parcel in the project area.

According to Section F, then, the Plan may be changed at any time subject only to the consent of the purchaser or lessee of the specific property covered by the modification.

We conclude that Section R of the Pilot Project Plan is inconsistent with Section F of the Plan. Therefore, Section F governs with respect to any changes in the Plan regardless of the impact upon property in the Pilot Project Area so long as that property is not the subject of the modification.

Plaintiffs further claim that there is no inconsistency between Sections R and F, that Section F deals with other owners in the Area but outside the Pilot Project Area. Were this proposition adopted, residents of the Pilot Project Area would have a right to veto any change in the Plan irrespective of whether the change covered property in the Pilot Project Area so long as they could show that the change affected their property. Area residents who resided outside the Pilot Project Area, however, would have no such right regardless of the impact upon their property for the sole reason that they do not reside in the Pilot Project Area. This is clearly untenable and must be rejected.

In order to succeed with any of these contract issues, however, plaintiffs must demonstrate not only that the City has breached its contracts with them, but also that they have suffered some sort of injury as a result of this breach. The purpose of the Plan, and clearly the intent of all contracts entered into pursuant thereto, is the racial, ethnic and economic integration of the Area. To show injury, therefore, plaintiffs must demonstrate that the City's alleged breaches threaten the Area's integration, or, in other words, that the Area will "tip." Whether the Area will tip, however, involves considerably more than its part in the resolution of the breach of contract issues; it goes to the very heart of this entire litigation and so we now undertake to deal with it.

#### V. TIPPING

##### A. Introduction

This issue is the crux of the litigation. Essentially, plaintiffs contend that the Area is in danger of tipping; that, given existing conditions, as more low income residents are introduced into the Area, the tipping point will be exceeded, middle income residents will flee the neighborhood which will then rapidly deteriorate. For this reason plaintiffs ask, inter alia, that this Court

halt the planned construction of Site 30 as low income housing. While plaintiffs recognize that tipping has been considered a racial issue, they maintain that its true characteristic is the low income of the families involved, and that the racial element is a subsidiary factor. Specifically, they assert that "the indiscriminate admission of relocatee low income families" has caused the Area to reach the tipping point. Defendants respond that the "tipping phenomenon is a racial issue which relates to economics only insofar as minority persons, i.e., blacks and Puerto Ricans, are often associated with persons of low income." We have concluded that defendants must prevail on this issue. Our reasoning, set forth more fully below, has two grounds: (1) the concept of tipping is racial and only incidentally related to income, and (2) even assuming that tipping does include economic classifications, plaintiffs have failed to show that the Area is, or is in danger of, tipping.

The primary issue in Otero v. New York City Housing Authority, 484 F.2d 1122 (2d Cir. 1973), was whether the New York City Housing Authority was required to comply with its own regulation regarding selection of tenants for a public housing project. The Authority argued that to do so would create a non-white pocket ghetto that would operate

as a tipping factor which would cause white residents to take flight and lead eventually to non-white ghettoization of the community.<sup>24</sup> The District Court granted summary judgment for plaintiffs, holding that, although the Housing Authority had a duty to foster and maintain racial integration, this duty could not, as a matter of law, be given effect where to do so would deprive a non-white minority of low cost public housing which would otherwise be assigned to it under the Authority's regulation. Our Court of Appeals reversed and remanded on the ground that there was a genuine issue as to whether the non-white concentration in the two project apartments would have a tipping effect which the Authority, in exercising its duty to integrate, was entitled to avoid by suspending operation of the regulation.

Plaintiffs herein impliedly invite us to expand the concept of tipping to include economic as well as racial classifications. We decline for two reasons: First, no

-----  
why exp.  
to seem?

24. Otero used the term "non-white" to include Puerto Ricans "for the purpose of this appeal only." 484 F.2d at 1126, n.4.

legal authority exists for the proposition advocated by plaintiffs. Second, the concept of tipping cannot be successfully expressed in economic terms.

The concept of tipping has heretofore been recognized only as a racial issue. In Otero the Court spoke of tipping solely in the context of changing racial concentrations within a neighborhood. That case followed an established line of authority holding that it is improper to build a housing project in a community which will cause a disproportionate increase in the concentration of minority persons tending to make the community a racial ghetto. Shannon v. HUD, 436 F.2d 809 (3rd Cir. 1970); Banks v. Perk, 341 F.Supp. 1175 (N.D. Ohio 1972); Blackshear Residents Organization v. Housing Authority of the City of Austin, 337 F.Supp. 1138 (W.D. Tex. 1971); Crow v. Brown, 332 F.Supp. 382 (N.D. Ga. 1971); and Gautreaux v. Chicago Housing Authority, 296 F.Supp. 907 (N.D. Ill. 1969), aff'd, 436 F.2d 306 (7th Cir. 1970), cert. denied, 402 U.S. 922 (1971). Professional analysis has similarly equated tipping with racial change. See Ackerman, "Integration for Subsidized Housing and the Question of Racial Occupancy Controls," 26 Stanford L. Rev. 245, 260 (Jan. 1974), which concluded that housing projects which tipped had one or more of the following characteristics: (1) located in or near a minority

area, (2) a black population well in excess of 30% of the population, and (3) a combined non-white population exceeding 50% of the total project population.

Secondly, tipping, as a phenomenon, cannot be discussed satisfactorily in terms of the income levels of housing residents. Plaintiffs claim, nonetheless, that an increase in the number of low income residents would be synonymous with an increase in the number of non-white tenants and that if the Area tips, middle income non-white residents will also flee. (Tr. 263-264, 301-303, 2526-2530). Plaintiffs' expert witness Roger Starr testified that tipping in the Area has nothing to do with the extent of the racial prejudice of its residents because they expected that the Area would contain a mixture of races and that they would not have moved in were they prejudiced. Rather, he contended, the Area will tip if the number of low income units exceeds 2,500 because these residents relied upon alleged representations of that figure as the maximum number of such units and because if this understanding is violated, their "subjective reactions" will cause them to flee. (Tr. 300-307).

This concept of tipping as a function of the gross numbers of low income residents must be rejected because, unlike the racial characteristics of a neighborhood, which

are easily measurable, any definition of low income is imprecise and depends upon an arbitrary income ceiling, the family size, and the cost of living, none of which remains constant. If one adopts as the income criterion the eligibility limits of public housing, then the characterization of low income persons ranges from \$6,100 maximum income for a family of one to \$10,200 maximum income for a family of seven. If, however, one adopts the eligibility limits for Section 236 housing, which are 135% of the public housing limits, and which plaintiffs must necessarily adopt since they include Section 236 units within their calculation of total low income units within the Area, then the corresponding maximum income limits range from \$8,235 to \$13,770. And if one adopts the Section 236 exception limits, then the maximum income ranges from \$9,250 for a family of one to \$17,200 for a family of seven or more. Thus a family may be categorized as low income according to one set of criteria but as middle income according to another, and either categorization will vary as children are born into a family or reach majority or otherwise terminate dependency.<sup>25</sup>

---

25. To illustrate: Dr. Frank Kristoff, plaintiffs' expert witness, testified that he defined a household of three as low income if it had an income of up to about \$6,800, and of four as low income up to about \$7,800. (Tr. 2534).

Regardless of the fact that the 2,500 policy was never intended as a fixed maximum, reliance upon a fixed number of low income residents to measure tipping is unfounded when the definition of low income is itself subject to arbitrary and varying criteria.

More important, despite their protestations to the contrary, implicit in plaintiffs' argument is the belief that low income persons have a greater propensity to induce neighborhood deterioration than their middle income counterparts. This idea, however, was rejected in Nucleus of Chicago Homeowners v. Lynn, 372 F.Supp. 147 (N.D. Ill. 1973). Moreover, two of plaintiffs' expert witnesses, Roger Starr and Dr. Frank Kristoff stated that aside from welfare and single parent families, one cannot associate a propensity toward anti-social behavior with low income families. (Tr. 231, 2547). In the absence of almost overwhelming proof of such a broad proposition, we too must reject it.

Even assuming arguendo, however, that tipping could be correlated with an increase in the low income population of a neighborhood, the questions are still raised as to what criteria should be considered in determining if the tipping point has been, or is likely to be, reached, and what standard of proof plaintiffs must meet

in order to succeed. While community attitudes towards an increasing presence of low income families must of necessity influence the stability of that community and are therefore relevant to a tipping analysis, the gross numbers themselves should be considered only to the extent that they are of a measurable group. Moreover, what is crucial is not the numbers per se (except insofar as they affect community attitudes) but rather the ability of the community from the standpoint of its services and facilities to absorb and serve the needs of the particular group in question.

We conclude for the purposes of this litigation that the tipping point of a community is that point at which a set of conditions has been created that will lead to the rapid flight of an existing majority class under circumstances of instability which result in the deterioration of the neighborhood environment. The criteria to determine whether an area has reached or is approaching the this point are: (1)/gross numbers of minority group families or families in a measurable economic or social group which are likely to affect adversely Area conditions; (2) the quality of community services and facilities; and (3) the attitudes of majority group residents who might be persuaded by their subjective reactions to the first and second criteria to leave the Area.

Pursuant to the standard adopted in Otero, plaintiffs must produce "convincing evidence" that, given the conditions of the Area, construction of public housing on Site 30 would cause the Area to tip. Although the rationale behind this stringent standard was not clearly developed in Otero, in Pride v. Community School Board, 488 F.2d 321 (2d Cir. 1973), the Court stated that Otero had adopted a stricter standard because it involved an outright denial of new public housing based upon racial classifications. In Pride, which involved the assignment of children because of their race to a school away from their neighborhood, the Court implied that a less stringent "rational basis" test would be applied where racial classifications are used for a benevolent purpose:

Cases applying that [stricter] standard invariably involve state action having a segregatory or discriminatory effect. No court has applied the test where state action has had the effect and objective of reducing discrimination and segregation.  
488 F.2d at 326-327.

See Note, The Benign Housing Quota: A Legitimate Weapon to Fight White Flight and Resulting Segregated Communities, 42 Fordham L. Rev. 891 (1974). See also Norwalk CORE v. Norwalk Redev. Agency, 395 F.2d 920 (2d Cir. 1968). Here,

as in Otero, the proposed racial and economic classifications, while intended to preserve the Area, would clearly result in a denial of public housing, given the Citywide need for such housing and the scarcity of alternative sites within the City. Accordingly, plaintiffs, who are in substantially the same position as the Housing Authority in Otero, must meet a stringent burden of proof on the issue of tipping.

We now consider the three "tipping" criteria referred to in the second paragraph immediately preceding this one.

#### B. The Community Involved

With respect to the first criterion, the community involved must be measured against some standard or norm, and the community involved must be disproportionate to the norm both in terms of the percentage concentration of minorities and the trend toward concentration. Defendants contend that the applicable norm is the entire City of New York. While comparative trends within the City as a whole or Manhattan in particular are significant, we find the critical norm or "relevant community" to be the West Side community or Community Planning District 7, which

extends from 59th Street north to 110th Street and from the Hudson River west to Central Park West. See Otero, 484 F.2d at 1129, n.8. This is essentially consistent with the testimony of Mr. Walter Fried (the present Vice Chairman of the New York City Housing Authority) who stated that the zone to be considered extends from 106th Street to the Lincoln Center Area. (Tr. 695).

The population trend for New York City as a whole has been an outward migration of whites and an increase in black and Puerto Rican persons as set forth in the following table presented at trial by Dr. Frank Kristoff, an expert witness called to the stand by plaintiffs. (Tr. 2630-2631).

New York City Population Profile

<u>Year</u>	<u>White</u>	<u>Black</u>	<u>Puerto Rican</u>
1950	90%	8%	2%
1960	81%	13%	6%
1968	75%	17%	8%

If a particular community had statistics showing both that the outward migration of whites was not occurring and that the percentage of whites was greater than District 7, Manhattan or New York City as a whole, then

that would be some indication that a particular community is not in danger of tipping (Tr. 2636). For the year 1970, the following census profiles were presented (Tr. 3486-3487):

	<u>White</u> 67.7%	<u>Black</u> 22%	<u>Puerto Rican</u> 10.3%
New York City			
Manhattan	60%	28%	12%
District 7	73%	17%	10%
West Side Urban Renewal Area	76%	15%	9.5%

Also as to District 7, there has been a general decrease in population of all racial mixtures from about 254,000 in 1960 to 212,000 in 1970 (Tr. 2639). Thus, District 7 is not experiencing the trend of a percentage decrease in whites which is the continuing trend for New York City (Tr. 2631), and the percentage of minorities for District 7 and the Area is less than New York City and Manhattan. .5

With respect to single parent families with children under 18, poverty, and median income, the following statistics were made a part of the trial record:

Single Parent Families  
with Minor Children  
(Tr. 3487-3488)

New York City.....	4.8%
Manhattan.....	5.6%
District 7.....	9.7%
West Side Urban Renewal Area.....	3.0%

Poverty Families  
(Tr. 3488-3489)

New York City.....	11%
Manhattan.....	13%
District 7.....	8.7%
West Side Urban Renewal Area.....	7.6%

Median Income  
(Tr. 3489)

New York City.....	\$9,700
Manhattan.....	\$9,000
District 7.....	\$11,250
West Side Urban Renewal Area.....	\$12,700

These statistics strongly point to the inherent economic stability of the West Side area.

Dr. Frank Kristoff testified that the above statistics showing the economic and social strength of a neighborhood are major factors in considering its stability. (Tr. 2659, 3494). According to Dr. Kristoff, the West Side community was, and continues to be, strong and stable (Tr. 2653-2654) and among the upper 25% of communities within New York City (Tr. 2669). There is nothing statistically showing that the West Side community is currently tipping or in danger thereof.

Only two items of statistical evidence were submitted by plaintiffs relating to the economic and racial stability of the Area: their calculation of the number of low income units existing in the Area, and statistics submitted by Mr. Fried which allegedly show a declining white population in certain public housing projects. As to the former, plaintiffs contend that there are currently 3,300 low income families in the Area, including 517 units on three perimeter sites, 274 squatter families and the full occupancy of Leader House, Columbus Manor, and Westwood House consisting of a total of 601 units.

We find plaintiffs' calculation to be substantially inaccurate. First, it has been established that the squatter families are not permanent residents and will be removed as the buildings which they occupy become ready for demolition.

Second, insofar as we are measuring the extent of fulfillment -- or overfulfillment -- of the 2,500 commitment, perimeter projects should not be included in the calculation. This is consistent with our finding that perimeter projects were intended to provide housing to dislocated Area residents for whom housing was unavailable in the Area proper. Finally, plaintiffs' assertion that Leader House, Columbus Manor and Westwood House are 100% low income is not supported by sufficient evidence.<sup>26</sup> We have serious doubts as to whether Section 236 housing should be included in a low income category. Accepting, however, defendants' admission that up to 50% of the total units at these sites is occupied by low income families (Tr. 3315-3316, 3322 and 3356), the maximum number of low

---

26. This assertion is not supported by the testimony of plaintiffs' witnesses which is inconsistent on that point. Arthur Bromberg, vice-president of Sulzberger-Rolfe, managers of Columbus Manor and Westwood House, testified that these buildings were 60% low income (Tr. 1429-1432). William Gaynor, however, former State Commissioner of Housing and Community Renewal, testified that he had been informed by Mr. Bromberg that 80% of the two projects were low income. (Tr. 2813-2814).

income units within the Area proper is 2,046. This consists of 795 units in four public housing projects, 853 units scattered among new middle income buildings and 276 units within rehabilitated buildings for a total of 1,924 units as well as the units occupied by welfare families at Leader House, Columbus Manor and Westwood House over and above the 30% allocated to low income families by the Plan itself, or 122 units. This includes 399 units of public housing at Stephen Wise House which according to State Commissioner Goodwin should not be considered low income because of their high income eligibility limits. (Tr. 3795).

The Fried statistics (Ex. 29) show that among five Area and perimeter public housing projects there has been from the time of their initial occupancy (1965 for the four Area projects, 1969 for the perimeter project) to December 31, 1972, a decrease in the white population from 52.4% to 46.1% and an increase in black and Puerto Rican occupancy from 15.6% and 31.3% to 19.5% and 33.6% respectively.<sup>27</sup> However, when these figures are compared to

---

27. Mr. Fried also testified that there had been a change in the character of public housing tenants; that the number of mother-headed households and those without an employable member was increasing. (Tr. 892). This was not verified at trial.

the above census figures for New York City, they show that the racial trends in those projects has been less severe than the general trend for the City. Indeed, the Fried statistics show that the percentage of black and Puerto Rican occupancy in both rehabilitated and leased public housing has decreased somewhat since initial occupancy.

Plaintiffs contend, however, that the Kristoff figures are irrelevant since they do not deal with racial and economic trends between 1970 and 1974 during which time plaintiffs claim the danger of tipping is in issue. However, the burden of proof is plaintiffs' and, in terms of statistical evidence, plaintiffs have shown nothing to rebut the conclusion that the Area is both racially and economically sound.

Plaintiffs also claim that the economic decline of the Area is shown by the lack of private investment and a decrease in property values. However, both Mr. Fried and Austin Haldenstein, a real estate broker specializing in the upper West Side, testified that the lack of private investment may be attributed to generally unfavorable economic conditions, including high mortgage rates and minimal tax benefits to potential purchasers of cooperatives. (Tr. 584-585, 750, 2331-2332). Moreover, the fact that several

conventional apartment houses, now under construction in the West Side, will rent at straight, unsubsidized Mitchell-Lama rates of approximately \$100 to \$120 per room suggests that plaintiffs' conclusions regarding private investment are unsupported. (Tr. 794-797, 2656-2660, 3787).

Mr. Haldenstein testified that beginning in 1970 there was a sharp decline in the number of brownstone sales and a decline of some 10-20% in the resale value of renovated brownstones. (Tr. 2169-2170). However, the figures which he provided at the Court's direction (Tr. 2168-69) show a substantial increase in resale prices over the cost of initial purchase.<sup>28</sup> Moreover, the number of resales for the period between 1969 and 1973 (five) was greater than from the inception of the Plan to 1969 (four). This shows

---

28. For example, one brownstone purchased in 1966 for \$32,000 was resold in 1971 after renovation for \$127,500. Another brownstone purchased in 1967 for \$80,000 was resold in 1971 after minor work for \$100,000. While much of the increase in price must be attributed to inflation and increasing value as a result of renovation, there is nothing to support plaintiffs' claim of declining property values. See Mr. Haldenstein's letter to the Court dated May 22, 1974.

that thus far there has not been any exodus of middle income residents as plaintiffs claim will occur if public housing is constructed on Site 30. On the contrary, the selling prices listed for the sixteen transactions including resales in the years 1970 through 1973 can only mean that individuals or families of substantial means replaced those who sold. In addition, none of the brownstone owners who testified had any unoccupied rental units and none of the units are occupied by low income families. Finally, Mr. Bromberg testified that all Mitchell-Lamas in the Area (managed by Sulzberger-Rolfe) were fully occupied. (Tr. 1626).

#### C. Community Services

Plaintiffs have made their strongest showing with respect to the second criterion, the quality of community services such as schools, sanitation and police control. Eight Area residents testified on behalf of plaintiffs as to numerous incidents and conditions suggestive of deterioration of the Area. Without going into the details of these incidents or conditions, the testimony may be categorized into the following general areas: (a) Extensive criminal deportment: "pushing" drugs, muggings, murder, assaults, burglary; (b) Graffiti inside halls and

and stairs and on the exterior of buildings; (c) Loitering; (d) Excessive noise at late hours; (e) Public drinking; (f) Breaking glass, throwing rocks, bottles and firecrackers, breaking windows; (g) Garbage strewn about the streets, accumulated in buildings and tossed out of windows; (h) Verbal assaults and obscenities; (i) Starting fires; (j) Acts of vandalism; (k) Drug addiction; (l) Fear of the neighborhood; (m) Increasing tension between low and middle income residents with particular emphasis on the squatters; (n) Stripping of cars and illegal car repairs on the street; and (o) A compelling necessity to hire private street guards.

In addition to the convincing testimony by Area residents on these reprehensible conditions, the managing agents and superintendents of Leader House, Columbus Manor and Westwood House offered similar testimony and added proof of the generally deteriorating condition of their respective buildings. One of the witnesses, Raphael Sifonte, states that he recently left his job as superintendent of Leader House because he would not expose his children to the drug situation there. In addition, Edward Sulzberger and Arthur Bromberg, President and vice-president respectively, of Sulzberger-Rolfe which manages nine (9) properties in the Area (including Columbus Manor and Westwood House), and Jay Olnek of Hampton Management Co., which manages Leader House, testified that the conditions aforementioned in and about

their buildings present serious management problems and that it is increasingly difficult to attract middle income families to the Area. (Tr. 1440-44, 1457-60, 2058-63).

We simply cannot overemphasize that the description of these revolting incidents and conditions was most disheartening. Defendants concede that the City sanctioned the presence of the squatters and the tenanting of Leader House, Columbus Manor and Westwood House with low income and welfare families in excess of the allocated 30%; they maintain, however, that they did this in order to meet the needs of low income relocatees consistent with the maintenance of a balanced economic and ethnic mix (Tr. 3169). While these needs must be met, the City has a concomitant obligation to assure that in the process the right of other residents to a safe community free of such revolting and disgusting anti-social acts and conditions is not thereby threatened. The rights of relocatees of all economic strata must be dealt with fairly but the right of the community to continued safety and stability is of no less importance.

If we had determined that the aforementioned acts and conditions were symptomatic of a consistent pattern or general trend within the Area we would be constrained to conclude that it is in fact tipping. However, from the

entire trial record it is clear that the offensive behavior in its most serious form, as summarized above, is localized within the three controversial Mitchell-Lamas. As to those buildings, there was a suggestion of substantial improvement. Frank J. Garcia, the superintendent of Columbus Manor, whose testimony we found persuasive, stated that since 1972 the situation has improved by 40% (Tr. 1679-1680). As to the eight Area residents who testified on behalf of plaintiffs, there was a marked concentration of witnesses from a small portion of the Area. Four of the eight reside in brownstones on 88th Street. A fifth until recently was a brownstone resident on 87th Street (technically not an Area resident). All five are active members of CONTINUE; their participation might have made them and their families inexcusably a hostile target for squatters and Area residents who seek additional low income housing (Tr. 1914-16). The remaining three witnesses were plaintiff-intervenors Karlen and Hudgins, brownstone owners on 94th Street, and a resident of St. Martins Towers on 90th Street, whose testimony, while sincere in its expression of concern for the future of the Area, lacked factual impression.

To rebut these witnesses, defendants produced eight residents, all except possibly one in the middle income category; they testified the Area is safe and free of any noticeable degree of anti-social behavior and that they do not foresee alarming conditions following the construction of public housing on Sites 4 and 30. These witnesses were owners of three brownstones on 88th, 91st and 94th Streets, residents of Leader House and St. Martins Towers and three other middle income apartment dwellers within the Area.

In addition we heard from Captain Peter Prezioso of the 24th Police Precinct, which includes the Area; he testified that crime figures in both the misdemeanor and felony categories have shown a marked decrease from 1971 through 1973 except for murder, rape, and felonious assault which he regards not "preventable crimes" (Tr. 3632a-3635; Ex. AJ). He gave testimony about various crime prevention programs instituted by the 24th Precinct over the past few years to improve the quality of police protection, including an anti-crime unit of 24 men in civilian clothes who patrol the area, block watchers and volunteer auxiliary policemen. (Tr. 3636-3646). Finally, Captain Prezioso stated that squatters have caused the police only one problem and that of minor significance. (Tr. 3648-3649).

Plaintiffs have adduced little effective testimony regarding the condition of the Area's schools, which together with the incidence of crime make up the most important criteria of the quality of community services generally. Several Area residents testified that they would not send their children to the Area's public schools because of their poor quality and minority racial concentration. We note however that this attitude is common to many middle and upper income residents throughout the City. In addition William Gaynor, former State Commissioner of Housing, testified from his observations of P.S. 84, an elementary school, and Joan of Arc Junior High School they were overcrowded and that there was a concentration of non-white children and a discipline problem (Tr. 2741). An Area resident whose children attend P.S. 84 also testified regarding an extensive discipline problem at that School (Tr. 2605-2606).

In contrast, several teachers and administrators from Area schools, including P.S. 84, testified that though there was indeed a low income and minority racial concentration to a high degree (Tr. 3388, 3442, 3580), their analysis of the schools was positive and hopeful. The principal of P.S. 84 testified that that school has been cited as outstanding in its educational programs and that vandalism and

exceptional disciplinary problems are rare. This analysis was supported by the testimony of a teacher coordinator at P.S. 84 who stated that the students come from a varied economic background and that many middle income families seek to enroll their children there. (Tr. 3264-3267). As to Joan of Arc Junior High School, which defendants concede has serious educational deficiencies, Mrs. Hannah Hess, former president of the Parents Association of P.S. 84 and current head of the Joan of Arc Mini School, testified that while there has been a decrease in violence at the High School, a great deal of hostility remains (Tr. 3274). At the Mini School, which contains 68 students randomly selected from the student body and reflecting a similar ethnic and economic breakdown, there has occurred through its personalized educational process a marked increase in the students' reading scores (Tr. 3574). The Mini School may expand to 120 students next year. Finally, Mrs. Elaine Schwartz, who directs a teacher training program at Fordham University and in that capacity has extensive contact with schools in the West Side Area generally, including Area schools, stated that while she would not send her children to Joan of Arc,

The hard work that's been put into the public school systems that began with decentralization has really helped the elementary schools a great deal and it is working up slowly, we hope, to the junior high schools. (Tr. 3422).

We find that while there has been substantial testimony of numerous deplorable anti-social acts within the Area, the totality thereof does not depict a general deteriorating condition. Further, we are not convinced that the Area's community services, primarily its schools and police control, would be unable to absorb 160 public housing families on Site 30. Accordingly, from that standpoint the Area is not in danger of tipping.

#### D. Community Attitudes

The third criterion is the attitude of Area residents to the prospect of additional low income units in the Area and in particular to the construction of public housing on Site 30. Plaintiffs contend that given the condition of the Area as they portray it, failure to adhere to the original alleged limit of 2,500 low income units and construction of public housing on Site 30 would cause massive flight on the part of middle income residents. Two brownstone owners testified that they have sold their brownstones because they felt the Plan was not being fulfilled and that the Area was deteriorating. (Tr. 1855-1856, 3014-3015). A third is awaiting the outcome of this litigation to see if the City will complete the Plan as he conceives it was originally promised. (Tr. 2383-2384). All residents called

to the stand by plaintiffs stated that the Area was no longer safe and that they believed the City had abandoned both the Plan and the Area as originally conceived. In addition, plaintiffs' expert Roger Starr testified that a maximum of 2,500 low income units was adopted as a principle of the Plan, that tipping was directly related to this covenant and that it would occur if the 2,500 maximum were exceeded because it was relied upon by middle income families as a "crucial element in the Plan" (Tr. 303-304; 311-314). He maintained that the fear of crime in the Area is rare for a community in which there has been such a vast investment of public and private funds (Tr. 257).

As has been shown, not only is plaintiffs' reliance upon the 2,500 commitment unfounded, but more important, there is neither an excessive minority nor a low income concentration in the Area and the quality of its community services has not been proven inadequate. Accordingly, while we do not question the sincerity of plaintiffs' expressions of fear and concern, they have failed to establish it by substantial proof. There is, for example, testimony by other middle income residents that they do not fear for the safety of the Area or its future. (1)

The assertion that a community might tip because of the unsupported fears of its residents demonstrates the inherent weakness of that tipping concept. In large measure, the tipping point is a subjective and prejudicial reaction of whites to minority group encroachment and to that extent is subject to a wide range of subjective factors. As one commentator has put it:

If differing individual white tolerances for black neighbors and jittery white expectations are tipping's primary causes, then tipping points will vary according to the attitudinal composition of a given white population and the differing arrangements of environmental factors which could trigger uncontrolled white fears that an irreversible chain of turnover has begun.

Ackerman, "Integration for Subsidized Housing," supra at 255. Moreover, fears held by people may have no connection to underlying facts (Tr. 2852). Accordingly, where, in light of the lack of alternative decent low income housing, a tipping analysis may mean an outright denial of housing to persons on the basis of suspect racial or economic classifications, such analysis must focus particularly upon objective and measurable criteria; community attitudes should then be considered only to the extent that they are supported by such criteria.

Mr. Roger Starr's assertion of an arbitrary tipping point of 2,500 units based upon community reliance on that figure does not go far enough. Not only is the term "low income person" undefinable with sufficient precision for the purpose of a tipping analysis, but Mr. Starr acknowledged that he did not know whether existing community services and facilities were adequate to support 2,500 units of low income housing (Tr. 372-373). Evidently Mr. Starr did not consider these objective criteria in his analysis, for he admitted that if the Plan called for 1,000 units or 5,000 units of low income housing, those figures might be the tipping point. (Tr. 300-305).

Plaintiffs assert that one of the causes of tipping is the lack of effective screening and eviction procedures to root out problem-prone families or persons who have committed acts of vandalism and crime. (Tr. 330, 779-786). Mr. Starr testified that he would favor construction of public housing on Site 30 and that it would not cause tipping if effective screening and eviction procedures were available (Tr. 345-349, 352).

However, both Mr. Joseph Christian, Chairman of the New York Housing Authority, and Mr. Fried testified that recent court decisions dealing with the Housing Authority's

screening and eviction procedures have limited its access to records as a means of verification and that the Authority must rely primarily on personal interviews with prospective tenants (Tr. 781-786, 3811-3812). In addition, judicially imposed sanctions extending due process rights to the eviction process have made that process heavily time-consuming.<sup>29</sup> Nevertheless, Mr. Christian stated that the limitations have not "stymied our efforts at getting out undesirable families" and that the Authority has implemented its screening and eviction procedures to the fullest extent authorized by law. (Tr. 3812).

What is important here is not only the effectiveness of those procedures but rather the fact that the record is devoid of any showing that the procedures were ever resorted to by plaintiffs as a means of ridding the Area of problem-prone families. We are constrained to conclude that while the record is replete with testimony by plaintiffs' witnesses of anti-social behavior on the part of squatters and residents of Leader House, Columbus Manor and

---

29. See e.g., Escalera v. New York City Housing Authority, 425 F.2d 853 (2d Cir.), cert. denied, 400 U.S. 853 (1970); Pyson v. New York City Housing Authority, 369 F.Supp. 513 (S.D.N.Y. 1974); Lopez v. Phipps Plaza South, Inc., 498 F.2d 937 (2d Cir. 1974).

Westwood House, little if any effort was ever made to locate and evict the offenders. Indeed, while numerous residents from 88th Street complained of the squatters' offensive and, in many cases, unlawful behavior, they did not pursue the matter. Captain Prezioso for instance could recall only one incident involving the squatters that was ever reported to his precinct. While we find no fault with plaintiffs' motives in this litigation and approve many steps they initiated to solidify their position, we must point out that they have failed to exhaust the available administrative remedies, time-consuming though they may be, as a possible means of preserving the Area and freeing it of truly undesirable persons. The authorities must count on effective citizen assistance and participation.

We cannot subscribe to what we regard as an untenable position advanced by plaintiffs: they have associated the undesirable behavior of individuals with a broad economic class and claim that the expanding presence of that class is undesirable and a cause of tipping. We declare no meaningful proof exists in the trial record that the presence of that class is per se a cause of neighborhood deterioration. We reject it.

We conclude therefore that plaintiffs have not shown convincing evidence that the Area is in danger of tipping or that construction of public housing on Site 30 would cause tipping.

To complete this point, we should note that numerous Federal, State and City officials also testified that the Area would not tip with the inclusion of additional low income housing beyond 2,500 units. Both Commissioner Goodwin and Mr. Christian (Chairman of the New York City Housing Authority) so testified. The fact that the State has assumed responsibility for completion of the Plan is extremely significant, for it reflects the opinion of the State Department of Housing and Community Renewal as to the hope and promise that condition of the Area afford. Commissioner Goodwin is convinced that the State's commitment for the Area was based upon its conclusion that the Area was a stable neighborhood and a desirable target for the commitment of State funds; that the State would not commit its funds to an area of the City which was in danger of tipping. (Tr. 3786-3789). She went further: even if there were between 3,500 and 4,000 low income families, that would not cause the Area to tip (Tr. 3798-3802).

In addition, contemporaneous with its NEPA study, HUD prepared a Project Selection Criteria Study which

analysed many of the factors central to a tipping analysis and on the basis of that study approved construction of public housing on Site 30. While we do not adopt the HUD study as a substitute for our tipping analysis inasmuch as the study did not consider what we regard as imperative factors, such as community stability, its relevant portions are consistent with our own analysis and lend further support to the conclusion that the Area will not tip. We believe it would be helpful to enlarge somewhat upon the HUD Criteria Study.

#### E. HUD Criteria Study

When federal funds are to be expended for low income housing projects, then, pursuant to 24 C.F.R., Part 200, Subpart N, HUD must make a site selection criteria study. The purpose of this study is to assure that low income housing is needed, that the project will be accessible to community facilities and services, that the project will not unduly overburden existing community facilities and services, and that the project will not adversely affect the environment. The site selection criteria study measures eight separate standards which are to be rated superior, adequate, or poor. A poor rating on any standard results in

SNT?

automatic disapproval of the project. For our purposes, the relevant standards and a brief analysis of the facts supporting HUD's respective conclusions are:

1. Need for Minority Housing Opportunity:

Within a one-mile radius of the proposed project, there is a population of 206,508 of which 72.8% are white and 23.6% Negro. Because the new housing project will be made available to those people within the Area relocating from sub-standard housing, there will be no increase within the community in the ratio of the proportion between minority and non-minority persons.

2. Need for Improved Locations for Lower Income

Families: The proposed location of the new low income housing project is satisfactory because there are sufficient community facilities and services and such facilities and services will not be overburdened as the result of the project. Recreational and cultural facilities are available, public schools are generally newer and less crowded than in other areas of the City, religious houses of worship are near, the streets serving the project are minor, twenty additional parking spaces will be made available, subway service is nearby, four fire and four police stations are nearby, five

hospitals close at hand, and a full variety of shops and restaurants exist. Therefore, the geographical location of the project is satisfactory.

3. Relationship of the Project to the Growth and Development of the Community: Because the low income housing project is an integral part of the West Side Urban Renewal Plan, it satisfactorily relates to the proposed growth and development of the Area.

William Green, Regional Administrator of HUD, testified effectively and convincingly that the first and second standards received adequate ratings because the proposed project was in an already integrated area where there is other federally assisted housing, and that purpose of these standards is to avoid concentrating minority and subsidized housing in any one section of a metropolitan area (Tr. 3290-3294). The third standard was given a superior rating. Mr. Green did not consider this standard to be relevant to a tipping analysis. On the other hand, plaintiffs contend that one of the major causes of tipping in this situation is that the proposed project is inconsistent with the Plan upon which they relied. Accordingly, the third standard is relevant to the extent that it rebuts the basis for plaintiffs' alleged reliance.

## F. The Pocket Ghetto Question

Plaintiffs also contend that construction of Site 30 as public housing would cause an 80% concentration of low income units on 91st Street between Amsterdam Avenue and Central Park West creating a "pocket ghetto" within the meaning of Otero. In Otero, the Housing Authority argued that adherence to its first priority regulation would result in a racial composition in the Seward Park Extension buildings of 80% non-white and 20% white, and that since this would act as a tipping factor within the community, the Authority was obligated to prevent the formation of such non-white pockets rather than to limit itself to the overall current community racial proportions. 484 F.2d at 1133. The Court accepted in principle the concept of a pocket ghetto and stated that to prove the validity of its claim, the Housing Authority must show that the "segregative effect of compliance with [its regulation] would be impermissible or, more specifically, that it would create a pocket ghetto of the type that would lead to a substantial increase in the overall non-white population in the community, precipitating a trend toward ultimate ghettoization of the entire community." 484 F.2d at 1135.

Plaintiffs, who are in substantially the same position as the Housing Authority was in Otero, have not met

their burden of proof. Whereas in Otero the claim was that a pocket ghetto would be created in the buildings which were the subject of the action, here, in contrast, plaintiffs have arbitrarily assumed that the critical area is a two block section of 91st Street. While this is not an unreasonable assumption, in view of the fact that Site 30 borders on both 90th and 91st Streets and along Columbus Avenue, it certainly would be no less reasonable to define the critical area as 90th and 91st Streets from Amsterdam to Columbus Avenues. According to this definition, if this were the critical area then the percentage of low income units would be just over 50%, or 751 out of a total of 1481 units. (Ex. S). Alternatively, one could reasonably expand the critical area to Central Park West with the resulting percentage of low income units being 49%, or 1,055 out of a total of 2,117 units. (Ex. S). Plaintiffs have not shown that their delineation of the critical area in which the alleged pocket ghetto would be created is the correct one. In the absence of such a showing we find no reason to accept it as the basis with which to assess the validity of their claim. Moreover, their asserted percentages are subject to question. Plaintiffs include in their 80% calculation 399 units of public housing at Stephen Wise Towers (Site 29) which is adjacent to Site 30. Yet

Commissioner Goodwin testified that on the basis of the high income eligibility limits at that project, she does not consider it to be low income housing. Again, as with the broader tipping analysis, plaintiffs have failed to define the generic term upon which they base their claims.

Even were we to accept plaintiffs' delineation of the critical area and their 80% calculation, they have not demonstrated that construction of public housing on Site 30 would in any way precipitate a trend toward the ultimate ghettoization of the Area, required by Otero whereby plaintiffs were obliged to demonstrate with convincing evidence that the alleged pocket ghetto on 91st Street would lead to the tipping of the Area. This they failed to do.

## VI. HUD's COMPLIANCE WITH NEPA

Plaintiffs contend that non-compliance with the National Environmental Policy Act of 1969 ("NEPA") makes illegal the federal decision to fund public housing at Site 30. Two arguments are made with respect to this issue: (A) the decision is illegal because no environmental impact statement was prepared as part of the decision making process, and (B) the decision is illegal because the environmental review that was conducted by HUD was inadequate as a matter of law. We have concluded, for the reasons set forth below, that plaintiffs are incorrect with respect to both arguments and that defendants must prevail on this issue as well.

### A. The Environmental Impact Statement

Plaintiffs argue, in substance, that NEPA requires the filing of an environmental impact statement in this kind of a situation; that HUD's decision not to file such a statement was arbitrary and erroneous, and that therefore HUD's decision to fund Site 30 for public housing was illegal. We have concluded that HUD did not need to file an impact statement; our reasoning is prefaced by a discussion of NEPA and HUD's own regulations with regard to impact statements.

Briefly stated, NEPA makes environmental protection part of the mandate of every federal agency; it requires federal agencies to make a factual study of the effect of a proposed project so that the agencies will be able to ascertain whether the benefits of the proposed action will outweigh the detrimental factors. Based upon such analysis, the agencies may then make an informed decision as to whether to proceed with a project. The statute requires an environmental impact statement only for "major" federal actions which "significantly" affect the quality of the human environment. 42 U.S.C. §4332(2)(C).<sup>30</sup> This

-----  
30. 42 U.S.C.A. Sec. 4332 provides:

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall --

\* \* \* \* \*

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the

general legislative language was developed in the guidelines published by the Council on Environmental Quality ("CEQ").<sup>31</sup> Section 3 of these guidelines directed federal

-----  
Footnote 30 cont'd

proposed action should it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes.

31. The Council on Environmental Quality is the agency established by Title II of NEPA, 42 U.S.C. §§4341-4347, to serve as a research, resource, and advisory body in the Executive Office of the President of the United States.

agencies to promulgate their own procedures for "identifying those agency actions requiring environmental statements..." Council on Environmental Quality, Guidelines § 3, 36 Fed. Reg. 7724 (1971).<sup>32</sup>

These CEQ guidelines are merely advisory, because the CEQ does not have the authority to prescribe regulations governing compliance with NEPA. Greene County Planning Board v. Federal Power Commission, 455 F.2d 412 (2d Cir. 1972). Following these CEQ guidelines, however, HUD published Circular 1390.1<sup>33</sup> setting forth the detailed procedures that it would employ for screening all HUD projects to insure its compliance with the Act as to each project.

---

- 32. See also Council on Environmental Quality, Preparation of Environmental Impact Statements, Proposed Guidelines, 38 Fed. Reg. 10856-10866 (1973).
- 33. HUD initially promulgated draft procedures, 37 Fed. Reg. 22673 (1972) which became incorporated in its final regulations, effective July 1, 1973.

HUD Circular 1390.1 established certain "thresholds" that are used to isolate those projects that may be major federal actions significantly affecting the quality of the human environment. A project passing the first threshold is then given special environmental consideration and study. This means that the project must be thoroughly investigated, and the HUD office involved must either file a "negative statement" indicating that approval of the project application is consistent with established HUD policy and standards and that the project would have no significant adverse effect on the environment or, if unresolved environmental issues or concerns remain, the HUD office must draft and circulate a detailed environmental impact statement.

These regulations established the rule that proposed apartment projects of one hundred or more units (including Site 30 with its 160 units) require a "Special Environmental Clearance." Additionally, paragraph 3 of HUD Circular 1390.1, Appendix A, states that issues raised by opponents and supporters of HUD projects shall be given careful consideration.<sup>34</sup> See Hiram Clarke Civic Club, Inc. v. Lynn, 476 F.2d 421, 423-24 (5th Cir. 1973).

-----

34. Paragraph 3 states:

"Special Environmental Clearance" for projects and major changes: That additional review of environmental

The precise question before us, then, is whether the negative statement or Special Environmental Clearance prepared by HUD, which concluded that the public housing project on Site 30 would not have a significant adverse impact on the environment, complied with the mandate of NEPA and with HUD's own guidelines.

---

Footnote 34 cont'd

consequences which shall be applied to larger size projects with greater environmental significance (including all projects above thresholds in Appendix A) and to projects which are controversial with regard to whether or not HUD and other appropriate environmental policies and standards are being met, or precedent-making in the sense that important environmental circumstances are not treated in HUD's central office guidance documents. For this purpose, the HUD Environmental Clearance Worksheet see (Appendix B) is suggested. All special environmental clearances shall result in either (a) a negative statement signed by the head of the HUD field office..., indicating that approval of the application is consistent with established HUD policy and standards and would have no significant adverse effect on the environment, or (b) if there are still unresolved environmental issues and concerns, the drafting and circulating of a 102(2)(C) environmental statement. A negative statement or a 102(2)(C) environmental statement shall become part of the application file and shall accompany the application through the HUD review and decision process. (emphasis in the original).

The appropriate standard for reviewing HUD's threshold determination that an environmental impact statement was not required here is whether that decision was "arbitrary" or "capricious" under §10(e) of the Administrative Procedure Act 5 U.S.C. §706. Hanly v. Kleindienst, 471 F.2d 823 (2d Cir. 1972).<sup>35</sup> See also Calvert Cliffs' Coordinating Committee v. A.E.C., 449 F.2d 1109, 1115 (D.C. Cir. 1971); Transcontinental Gas Pipe Line Corp. v. Hackensack Meadowlands Development Comm., 464 F.2d 1358, 1365 (3rd Cir. 1972); Conservation Council of North Carolina v. Froehlke, 340 F.Supp. 222, 225 (M.D.N.C. 1972), Citizens for Reid State Park v. Laird, 356 F.Supp. 783 (D. Mo. 1972).

In applying this standard to HUD's determination that the proposed public housing project would not significantly affect the environment, we must first define the term "significantly" as it is used in §108(2)(C) and then determine

---

35. Hanly v. Kleindienst, supra, involved a NEPA study of the proposed construction of a jail as part of the Court House Annex being built in the Foley Square neighborhood. The case was remanded twice by the Court of Appeals, first as Hanly v. Mitchell, 460 F.2d 640 (2d Cir. 1972) (hereafter "Hanly I") and then as titled above (hereafter "Hanly II").

what are the appropriate environmental criteria that must be considered in a NEPA study. As to the first task, the Second Circuit has interpreted the amorphous term as follows:

"In the absence of any Congressional or administrative interpretation of the term, we are persuaded that in deciding whether a major federal action will 'significantly' affect the quality of the human environment the agency in charge, although vested with broad discretion, should normally be required to review the proposed action in the light of at least two relevant factors: (1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area."

Hanly v. Kleindienst, 471 F.2d at 830-831.

As to the range of environmental criteria that must be considered, plaintiffs contend that psychological and social as well as physical factors must be included, also that HUD was required to analyze issues such as neighborhood stability and community attitudes and fears. Specifically, plaintiffs claim that HUD should have determined whether the proposed project would cause the Area to "tip." Defendants respond that a NEPA study does not require an analysis of psychological and social factors and that although HUD's study does not specifically mention the word "tipping," it did consider those measurable factors which

bear upon the project's social impact, including the percentage of minority residents and the quality of community services and facilities, and on that basis HUD concluded that the project would not cause tipping. Finally, defendants contend that issues such as the propensity of low income persons to commit anti-social acts and community fear of the presence or influx of low income persons are not measurable factors and therefore not part of a tipping or social impact analysis.

The concept of tipping as defined in Otero is a racial population change in a community over a short period of time. Plaintiffs claim that a study of tipping necessarily involves an analysis of psychological and sociological factors relating to the attitudes and fears of community residents. There was considerable testimony by plaintiffs' witnesses, both expert and Area residents, that there is a rapidly growing fear in the Area of increasing crime and ghettoization, and that these attitudes are attributable to the increasing number of low income families, particularly the squatters.

The issue is two-fold: (1) Whether NEPA requires consideration of those tangible factors such as the incidence of crime and the quality of schools which are the basis for social attitudes of residents; and (2) Whether such attitudes must also be weighed independently of the tangible factors upon which they may be based.

The law is clear that the requisite environmental analysis includes physical, social, cultural and aesthetic dimensions. Hanly I, 460 F.2d 640 (2d Cir. 1972), a leading case interpreting NEPA in this Circuit, states positively:

"The National Environmental Policy Act contains no exhaustive list of 'environmental considerations,' but without question its aims extend beyond sewage and garbage and even beyond water and air pollution. See City v. Velde, 451 F.2d 1130 (4th Cir. 1971); Loose Hollow Foothills League v. Romney, 334 F.Supp. 877 (D. Or. 1971). The Act must be construed to include protection of the quality of life for city residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban 'environment' and are surely results of the 'profound influences of ... high-density urbanization [and] industrial expansion.' Section 101(a) of the Act, 42 U.S.C. §4331(a)." Hanly I at 647.

Thus issues such as percentage of minority residents or proximity of public housing projects and the quality of community services such as the degree of crime, police protection, schools, hospitals, fire protection, recreation, transportation and commercial establishments are essential to a NEPA study.

Plaintiffs argue, however, that increasing the number of low income families will "tip" the Area because they will cause a rise in the incidence of crime and anti-social behavior in the Area such that middle income residents

out of fear for the safety and stability of the Area will flee. Accordingly, they argue, the NEPA study of the environmental impact of public housing on Site 30 should have included an analysis of its effect upon the incidence of crime and its impact upon the attitudes of the community.

We find, however, that community attitudes and fears, or the propensity of certain economic or racial groups to commit anti-social behavior, do not lend themselves to the same type of objective analysis and are not required in a NEPA study. In Hanly II, supra, plaintiffs contested the failure to consider the psychological and sociological effects upon the residents of the Foley Square neighborhood brought about by the construction of a jail within the new Court House Annex. Though the Court did not expressly decide the issue, it nevertheless observed:

For the most part plaintiffs' opposition is based upon a psychological distaste for having a jail located so close to residential apartments, which is understandable enough. It is doubtful whether psychological and sociological effects upon neighbors constitute the type of factors that may be considered in making such a determination since they do not lend themselves to measurement. Hanly II at 833.

Unlike factors such as noise, which can be related to decibels and units which measure duration, or crime, in which crime statistics are available, psychological factors are not readily translatable into concrete measuring rods. Hanly II at 833 n.10. (4)

Similarly, in Nucleus of Chicago Homeowners Association v. Lynn, 372 F.Supp. 147 (D. Ill. 1973),

plaintiffs sought to enjoin the construction of a low income housing project on the ground that HUD, in its NEPA study, failed to consider the effect of the social characteristics of low income people upon the neighborhood. The complaint was dismissed after trial. Plaintiffs asserted that low income people "possess a higher propensity toward criminal behavior and acts of physical violence, a disregard for the physical and aesthetic maintenance of real and personal property, and a lower commitment for hard work." Supra at 149. The court found that measuring human behavior and analyzing its consequences on the environment "is an especially difficult, if not impossible, task," relying upon only II, supra, and Cross v. Harris, 418 F.2d 1095, 1107 (D.C. Cir. 1969). As to whether the social characteristics of public housing tenants constitute an environmental consideration within the scope of NEPA, the Court took the position that:

"Environmental impact in the meaning of the Act cannot be reasonably construed to include a class of persons per se. The provisions of the Act concern actions which harm or affect the environment. Therefore, the social and economic characteristics of the potential occupants of public housing as such are not decisive in determining whether an impact statement is required under the Act. The relevant consideration is whether acts or actions resulting from the social and economic characteristics will affect the environment." 372 F.Supp. at 149. (7)

Plaintiffs' expert witnesses have testified similarly that aside from welfare families and those headed by a single parent, low income families could not be associated with a propensity for social problems. (Tr. 231, 2547). Another expert called for the purpose of assessing the adequacy of the HUD study stated that though fears may contribute to neighborhood instability, they may be irrelevant to actual facts. (Tr. 2852).

Accordingly, neither the alleged antisocial propensities of low income persons nor the fears which their increasing presence may engender are objective criteria of community stability and as such do not fall within the ambit of a NEPA study. We conclude therefore that determination by HUD that the conversion of Site 30 to public housing would not "significantly" affect the environment was not arbitrary or capricious. Further, we reiterate our finding that no convincing proof on this point exists in the record before us; certainly to engage in inferences instead would be both unwarranted and dangerous.

#### B. The Special Environmental Clearance

Plaintiffs argue, alternatively, that HUD's environmental study, the Special Environmental Clearance (Ex. E), was inadequate as a matter of law. Among plaintiffs'

criticisms are that the study failed to consider community opposition to the project; that it ignored a large number of the proposed project's environmental consequences; that HUD did not conduct an independent analysis of environmental issues, and that the study failed to consider alternatives to the proposed project. We find, however, that the study is satisfactory in all these respects.

HUD's study (Ex. E) must be sustained if its findings that construction of 160 units of public housing on Site 30 were based upon adequate coverage of the requisite criteria defined above and are supported by the facts adduced at trial. The burden rests upon plaintiffs to raise substantial environmental issues and to establish that HUD's findings are based upon inadequate evidentiary development. Only to that extent do we consider evidence on the environmental impact of the proposed project in order to determine the reasonableness of HUD's findings. Hiram Clarke Civic Club, Inc. v. Lynn, supra at 425. See also Save Our Ten Acres v. Kreger, 472 F.2d 463 (5th Cir. 1973).

The study is made up of several parts. The first part is a one-page statement of the ultimate conclusion that the proposed project will not have a "significant adverse impact on the environment." The statement also points out that there was a "considerable organized opposition to

the project... motivated by alleged social impacts... [but such] impacts are not environmental impacts within the context of Section 101(b) of NEPA."

Plaintiffs contend that HUD failed to consider community opposition to the proposed project or to provide an opportunity for the community to express its views regarding the environmental review. While there is no statutory provision on the subject, the law is now clear that, consistent with the obligation to "affirmatively develop a reviewable environmental record...even for purposes of a threshold section 102(2)(C) determination," Hanly I, supra at 647, before a threshold determination of significance is made, "the responsible agency must give notice to the public of the proposed major federal action and an opportunity to submit relevant facts which might bear upon the agency's threshold decision." Hanly II at 836. Moreover, Section 5(a)(3) of HUD's own regulations provides that "issues raised by opponents...of the HUD actions shall be carefully examined to determine whether the project involves significant environmental impacts."

HUD has complied with that obligation. The NEPA study includes several letters from officers of CONTINUE setting forth in detail its opposition to the project and Mr. John Maylott, director of the New York City area office

of HUD at the time (the study was completed in April, 1972) testified that on numerous occasions he met with opponents of the project to ascertain their views (Tr. 3092-93). Thus, plaintiffs had ample opportunity to make known their views and submit facts relevant to the determination.

The second part of HUD's NEPA study consists of a four-page Special Environmental Clearance Worksheet. This section briefly addresses the five criteria set forth in Section 4332 of NEPA which must be analysed if a "detailed" environmental statement were required, as well as population density, the quality of community facilities serving the Area, and the incidence of crime. In respect to population density, the facts show that Site 30 will contain 160 units of which at least 16 will be for the elderly, a maximum population of 576 persons and a normal maximum number of children of 356. Neither the population density nor the dwelling unit density will significantly alter or be incongruous with the immediately surrounding area. With respect to public schools, all elementary and intermediate schools are under-utilized, and the overcrowding in the high school is being alleviated by new construction. Other community facilities such as health, recreation, cultural and transportation facilities were found to be adequate; no issue of inadequacy has been raised by plaintiffs. In respect to

crime, 1971 statistics placed the Area in the "high per capita" as to robberies and burglaries and "intermediate" as to auto thefts and homicide. The study concludes that there is no basis on which to conclude that the project would have an impact upon the incidence of crime in the Area.

The next portion of NEPA's study consists of a 13-page draft environmental clearance worksheet prepared by the New York City Housing Authority (Ex. E-1). Part G of the worksheet states that Site 30 will have seventeen stories of which the ground floor will be commercial and that 32 of the units are preliminarily designated for the aged.<sup>36</sup> The project will be "an integral part of the area," will serve the needs of the relocatees "whose need for housing can only be met through the provision of low-rent public housing." Part H of the report, the stated purpose of which is to analyze "physical, social, and aesthetic dimensions," begins with an analysis of the housing stock describing them as in "good condition" of which "many have become cooperatives in recent years." As to the brownstone streets, "Trees and backyard gardens have been planted and many streets have regained much of their original charm." Adequate

---

36. Mr. Fried testified that this was inaccurate and that only 16 units were specifically designated for the elderly (Tr. 654).

transportation is accessible. Public facilities serving the proposed site include four fire stations, four police stations, and five health facilities and hospitals. In the surrounding district there are 15 public housing developments with 5,266 units and 24 moderate income units with 10,795 units; and of a population of about 232,000, 80% are white, 12% Negro, and 8% Puerto Rican. The schools are less crowded and newer than in most areas of New York City. Private and parochial schools have greatly expanded, and such local private schools as Ethical Culture, Columbia Grammar, Franklin, Baldwin, Bentley, Trinity, Collegiate and Walden attract students from all over Manhattan. The building of the project itself will create job opportunities for minority persons. The Area has many cultural and recreational facilities, and the financial commitment to it has produced "sound housing and supporting services for residents of all income levels..."

In Part I, the Housing Authority concludes that it foresees no adverse influence created by the development. In Part J, the Authority concludes that there are no alternative site locations because of the scarcity of land. To shun the West Side Urban Renewal Area in favor of outlying sites "would be to relegate the inhabitants of these areas to the worst possible housing and environmental conditions with all

the evils concomitant to such an existence." There are 135,000 families on the Authority's waiting list who "urgently require better housing."

The next portion of HUD's study includes data on zoning and data on air pollution, also CONTINUE's assertions and complaints. The following portion includes HUD's four-page evaluation of the application for Site 30; this evaluation includes many of the statistics reviewed above.

We find that the HUD study in its totality gave satisfactory coverage to both the environmental and social factors requisite to a NEPA analysis. While the evidentiary basis for its conclusions regarding the incidence of crime and the quality of Area schools is deficient in that it fails to develop a reviewable environmental record, the testimony adduced at trial (supra at Part V) demonstrates that HUD's conclusions in respect to these issues were reasonable and supported by the evidence.

Plaintiffs claim however that the NEPA study was inadequate because HUD did not conduct an independent analysis of environmental issues, that HUD relied on information supplied by the Housing Authority. NEPA is specifically directed to the agency with overall responsibility for a proposed federal action and that agency must make its own

independent, balanced judgment of the environmental implications of the proposed action. Greene County Planning Board v. Federal Power Commission, 455 F.2d 412 (2d Cir. 1972); Calvert Cliffs Coord. Com. v. United States Atomic Energy Comm., 449 F.2d 1109 (D.C. Cir. 1971). See also, Scenic Hudson Preservation Conference v. F.P.C., 354 F.2d 608 (2d Cir. 1965), cert. den. sub. nom. Consolidated Edison Co. of New York v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966). The reason for this restriction is that:

"Certification by another agency that its own environmental standards are satisfied involves an entirely different kind of judgment. Such agencies, without overall responsibility for the particular federal action in question, attend only to one aspect of the problem: the magnitude of certain environmental costs. . . . Thus the balancing analysis remains to be done. It may be that the environmental costs, though passing prescribed standards, are nonetheless great enough to outweigh the particular economic and technical benefits involved in the planned action. The only agency in a position to make such a judgment is the agency with overall responsibility for the proposed federal action -- the agency to which NEPA is specifically directed."  
Calvert Cliffs, supra, at 1123.

Moreover, where the judgment relied upon is that of the applicant, i.e. the Housing Authority, there is the possibility that the applicant's statement may be based upon self-serving assumptions. See Greene County Planning Bd. v. F.P.C., supra at 420.

Here, however, while HUD did in fact rely upon information supplied by the Housing Authority in its application (the Draft Environmental Worksheet), HUD made an independent analysis and judgment based upon all the information available to it. Moreover, that analysis uncovered the only significant inaccuracy in the application regarding the existence of community opposition to the project, and HUD officials met independently with those opposed in order to ascertain their views. This demonstrates not only did HUD exercise independent judgment but also that it verified the quality of the information submitted. The cases upon which plaintiffs rely are inapposite for they involve situations wherein the agency charged with a NEPA study substituted the judgment of another agency. See Calvert Cliffs, supra; Greene County, supra. We have found no authority for the proposition that HUD may not rely upon information submitted by another agency so long as it makes its own judgment as to the environmental impact of a proposed project.

Finally, plaintiffs contend that the study was inadequate in that it failed to consider alternatives to the proposed project or its cumulative effect in the context of related government actions, and that an environmental impact statement should have been prepared relative to the whole Area. As to the last claim, we fail to see its relevance to the issue before us -- whether HUD's NEPA study approving

Site 30 is supported by the facts. As to consideration of alternatives, this is required only in an environmental impact statement; HUD had determined that such a statement is not necessary because the project will not significantly affect the environment. Moreover, the Housing Authority stated in its draft environmental clearance worksheet that, considering the scarcity of available sites and the unmet needs for public housing, there are no alternatives. As to consideration of related governmental actions, such as the tenancy of certain middle income buildings with low income tenants in excess of 30% as allegedly planned, the leasing of middle income designated units for welfare families and the conversion of Site 4 to public housing, HUD found that the Area was being developed according to an approved urban renewal plan, that the proposed project was consistent therewith and that from an evaluation of the Area, its raw numbers and physical condition and the quality of its community services, the building of a public housing project on Site 30 would have no adverse environmental impact. This, in our judgment, constitutes an adequate consideration of cumulative impact measured by the standard set forth in Hanly II, supra.

Accordingly, we conclude that plaintiffs' attacks are ineffective. Under the circumstances before us we find that HUD did not need to file an environmental impact statement and that the environmental study which it did conduct was legally sufficient.

VII. THE CITY'S APPROVAL OF THE CONVERSION  
OF SITES 4 AND 30

Plaintiffs have raised an additional issue in their post-trial memoranda regarding the approval by the various City agencies of the conversion of Sites 4 and 30 from middle income to public housing. They contend that such changes in land use designation under an urban renewal plan require a formal plan change which must be processed pursuant to Article 15 of the New York General Municipal Law and the National Housing Act of 1949, Section 105(a) and (d). Processing pursuant to these statutes requires certified approval by HDA, the State Commissioner of Housing and Community Renewal, the City Planning Commission, the Board of Estimate and the Federal Government. Defendants concede that approval of the changes was effected pursuant to Section 150 of the New York State Public Housing Law rather than Article 15 of the General Municipal Law. They claim, however, that the substantive requirements of both statutes are essentially identical and that plaintiffs therefore can claim no injury or denial of a fundamental right.

This issue was not among those stipulated to at trial. Moreover, despite the testimony of numerous federal, state and city officials, plaintiffs made no inquiry as to (1) \*

the proper mechanics of effecting conversion of Sites 4 and 30, such that the issue might have been properly met and clarified at trial. However, inasmuch as this issue is reasonably related to those raised at trial and in the pleadings, we consider it to the extent of determining whether failure to process the changes pursuant to the General Municipal Law deprived plaintiffs of any substantive right or of procedural due process.

Because the Housing Authority has jurisdiction over public housing projects in the City, HDA requested the Authority to prepare a Plan and Project for public housing on both Sites 4 and 30 for submission to the City Planning Commission and the Board of Estimate, pursuant to Section 150 of the Public Housing Law. The Plan and Project for Site 4 (Ex. 23) was submitted to the City Planning Commission which, after a public hearing held on July 5, 1970, unanimously approved the conversion to public housing and found it consistent with the Plan. (Ex. 24). Both the Plan and Project and the Report of the City Planning Commission establish that the site change was considered within the framework of the Area and its plan. The Plan and Project states in relevant part:

"The site [Site 4] has been designated for redevelopment as part of the West Side Urban Renewal Plan. The project will serve as a relocation resource for tenants who will be displaced from other sites still to be developed within the urban renewal area." (Ex. 23, p.1).

The Site 4 public hearing before the Board of Estimate took place on September 17, 1970. The Board's resolution (Exhibit 28) approved the City Planning Commission's Report on the Site 4 change and HDA's Site 4 Plan and Project, and authorized a conveyance of the Site 4 property to the Housing Authority for the proposed project. The Board's resolution also identified the Project as Site 4 in the Area and states that the Project will serve as a relocation resource for tenants displaced from the sites within this Area.

The same procedure was followed for the conversion of Site 30 to public housing. At the request of HDA, the Housing Authority prepared and submitted to the City Planning Commission a Plan and Project for public housing on Site 30, which is replete with references to both the Area and Plan. (Ex. 25). A public hearing was held before the City Planning Commission on June 23, 1971. Its report (Ex. 26, p.5) approves conversion of the site to public housing and states that the change is necessary "to help achieve

the goals of the West Side Urban Renewal Project." The Report discusses many of the issues raised in this litigation, i.e. squatters, allocation of low income units and relocation priorities, and states:

"All new housing in the West Side Urban Renewal Plan, including that proposed for Site 30, was intended to provide relocation for on-site tenants displaced by the renewal activity." (Ex. 26, p.3).

The final approval for the Site 30 change was granted by the Board of Estimate after public hearing on November 11, 1971. The Board's resolution (Exhibit 27) adopted the Commission's report and approved the change in site designation in essentially the same terms as for Site 4. It should be noted that twenty-two (22) speakers appeared at the Board's public hearing, for and against the change under consideration, including representatives of Trinity and CONTINUE as well as Messrs. Starr and Fried.

The fundamental requisite of due process is the opportunity to be heard, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest and to assert before the appropriate decision-making body the reasons for such choice. Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306, 336 (1950); Grannis v. Ordean, 234 U.S. 385, 394 (1914). In light of the full

hearings held with respect to the conversion of each site before both the City Planning Commission and the Board of Estimate, it cannot be said that plaintiffs did not have full and ample opportunity to express their opposition. Moreover, the reports of both the Commission and the Board establish that the conversion of both sites was considered in light of the Plan and found to be consistent with the overall development of the Area. Plaintiffs have failed to establish that consideration of the proposals under the General Municipal Law rather than the Public Housing Law would have in any way resulted in the use of different criteria, let alone a different conclusion.

As to the consent of the State Commissioner of Housing and Community Renewal, Article 15, Section 514 of the Urban Renewal Law provides in pertinent part as follows:

"§514. Filing of proposed plans

\* \* \* \* \*

Upon receipt of a copy of a proposed urban renewal program, or any proposed change therein, the commissioner may transmit his criticism and suggestions to the municipality or agency, as the case may be. No change in an urban renewal program assisted by state loans, periodic subsidies or capital grants may be made by a municipality or agency without the approval of the commissioner."

Defendants concede that no such consent was ever obtained pursuant to that statute. However, it is clear from the testimony of the current Commissioner, Lee Goodwin, that the State has no objection to and is in full accord with the construction of public housing on Sites 4 and 30. We conclude for the purpose of this litigation, and in light of plaintiffs' failure to raise this issue until the last minute (a lapse of almost 2 1/2 years from the commencement of the action to the conclusion of trial), that the implicit approval of the Commissioner sufficiently satisfies the substantive requirements of Section 514 to defeat plaintiffs' claim. (K) +

Margulies v. Lindsay, 31 N.Y. 2d 168 (1973), on which plaintiffs rely, involved the Forest Hills Public Housing Project; it is inapposite. The issue there was the necessity of a resubmission to the City Planning Commission and Board of Estimate of a new Plan and Project for public housing because of a change in the number, height and bulk of the proposed building after the project had been once approved at earlier public hearings. There is no requirement here for another public hearing, since the issues in controversy were fully explored at the hearings already held and there has been no proposed change since those hearings. Plaintiffs do not contend that the Site 30 and

4 projects have substantially changed such that a new series of public hearings is required, but rather that the initial hearings were defective. Accordingly, Marguilies is inapplicable to this case.

As to the issue of federal approval, Section 105 (a) of the National Housing Act provides that contracts for loans or capital grants by the Federal Government require that the Urban Renewal Plan be approved by the local governing body and that the approval include certain findings. As pointed out above, the changes in the Plan were clearly approved by the City's local governing body (the Board of Estimate), and the required findings, although not stated formally in the Board's resolution or in the precise language ~~(f)~~ called for by the General Municipal Law, are present throughout the City Planning Commission's Report in each case, which Reports were adopted and approved in each of the Board's resolutions. Section 105(d) of the National Housing Act provides that no land for any project assisted under Title I of the National Housing Act be acquired by the local public agency (City of New York) except after public hearing on notice. Since no issue of improper land acquisition is involved in this litigation, Section 105(d) is inapplicable. ~~(f)~~

The change in designation for Site 30 was clearly processed through and approved by HUD. That approval took the form of its NEPA study (Exhibits E, E-1), Site Selection Criteria Study (Exhibit B) and, of course, ultimately, its execution of an amendment to the Annual Contributions Contract between the Federal Government and the Authority relative to funding the construction of the Site 30 project (Exhibit AD). Since construction of the Site 4 project depends on federal funding, currently not available, the various studies required prior to funding have not yet been undertaken by HUD.

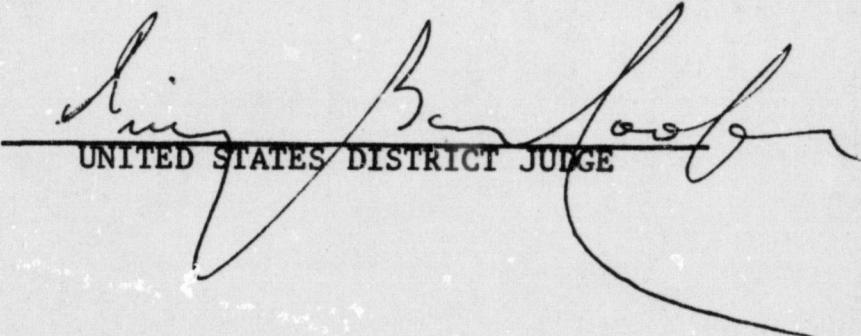
This case has troubled us greatly. The goal of a racially, ethnically, and economically integrated community is sought by many but the road to achieving it is protracted and oftentimes perilous, a course frequently encountered where objectives are laudatory. The hopes, fears and needs of different classes and races must somehow be reconciled if urban peace is to be attained. Our resolution of this litigation is, we hope, one more step towards that end.

For the reasons set forth above, therefore, we conclude that the evidence presented by plaintiffs is factually and legally insufficient to warrant the relief sought. Accordingly, with the exception of plaintiffs' motion for counsel fees, which we will consider at a later time, judgment shall be entered in favor of defendants.

The foregoing shall constitute the Court's findings and conclusions of law.

SO ORDERED:

New York, N.Y.  
November 15, 1974

  
\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE